Montana Code Annotated
2025

Public Utilities & Carriers • Property
Mortgages, Pledges & Liens
Estates, Trusts & Fiduciary Relationships

VOLUME 10

MONTANA CODE ANNOTATED
Statute Text 2025

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Website: legmt.gov

Printed and Bound by:
West, a Thomson Reuters business
610 Opperman Drive
Eagan, MN 55123

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Part 1
Public Service Commission

69-1-101. Definition of commission. As used in this title, the term "commission" means the public service commission provided for in 2-15-2602.

History: En. by Code Commissioner, 1979.

69-1-102. Creation of public service commission. A public service commission is hereby created, whose duty it is to supervise and regulate the operations of public utilities, common carriers, railroads, and other regulated industries listed in this title. Such supervision and regulation shall be in conformity with this title.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part); amd. Sec. 1, Ch. 43, L. 1979.

Cross-References

Commission as head of Department of Public Service Regulation, 2-15-2601.
Creation of Public Service Commission, 2-15-2602.
Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.
Regulation of utilities, Title 69, ch. 3.
Supervision and regulation of motor carriers, 69-12-201.
Regulation of railroads, Title 69, ch. 14.

69-1-103. Composition of commission. The commission shall consist of five members, who shall be qualified electors of the district from which they are elected, with each such member elected from a separate district of the state.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

Cross-References

Composition of Public Service Commission, 2-15-2602.

69-1-104. Public service commission districts. (1) In this state there are five public service commission districts, with one commissioner elected from each district. Districts are based on the house districts submitted as part of the redistricting plan to the secretary of state pursuant to Article V, section 14, of the Montana constitution. The house districts are distributed as follows:

(a) first district: 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 43, 44, 45;
(b) second district: 39, 40, 41, 42, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62;
(c) third district: 37, 60, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 85, 86;
(d) fourth district: 1, 2, 6, 8, 9, 10, 12, 13, 14, 87, 88, 89, 90, 93, 94, 95, 96, 97, 98, 100; and
(e) fifth district: 3, 4, 5, 7, 11, 15, 16, 17, 18, 24, 25, 76, 80, 81, 82, 83, 84, 91, 92, 99.

(2) During a legislative session and following the receipt of the latest official final decennial census data, the legislature:

(a) shall evaluate existing commission districts;
(b) may adjust commission boundaries to comply with the United States constitution;
(c) shall prepare and adopt a final commission district map; and
(d) shall file the final commission district map with the secretary of state.

History: En. 70-101.1 by Sec. 2, Ch. 339, L. 1974; R.C.M. 1947, 70-101.1; amd. Sec. 1, Ch. 294, L. 2003; amd. Sec. 1, Ch. 272, L. 2023.

69-1-105. Term of office — term limits. (1) A term is for a period of 4 years. A commissioner when elected shall qualify at the time and in the manner provided by law for other state officers and shall take office on the first Monday of January after the election.

(2) A commissioner shall serve until a successor is elected and qualified.

(3) The secretary of state or other authorized official may not certify a candidate's nomination or election to the public service commission or print or cause to be printed on any

ballot the name of a candidate for the public service commission if, at the end of the current term of that office, the candidate will have served in that office or, had the candidate not resigned or been recalled, would have served in that office for 8 or more years in a 16-year period.

(4) When computing the time served for the purposes of subsection (3), the provisions of subsection (3) do not apply to time served in terms that ended during or prior to January 1995.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part); amd. Sec. 1, Ch. 271, L. 1995.

Cross-References

Limitation on terms of office, Art. IV, sec. 8, Mont. Const.
Term of office, 2-15-2602.

69-1-106. Vacancies. (1) Any vacancy occurring in the commission must be filled by appointment by the governor as provided in this section. The appointee shall hold office until the next general election and until a successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the commission, there must be elected one member to fill out the unexpired term for which the vacancy exists.

(2) (a) When a vacancy occurs, if the former incumbent represented a party eligible for primary election under 13-10-601, the person appointed by the governor must be a member of the same political party and must be selected by the governor as provided in subsections (3) and (4).

(b) If the former incumbent was an independent or was originally nominated from a party that does not meet the requirements of 13-10-601, the governor shall appoint an individual to the vacant position within 45 days of receiving notification from the secretary of state of the vacancy.

(3) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the governor and, if the former incumbent represented a party eligible for primary election under 13-10-601, the state party that was represented by the former incumbent.

(4) (a) Upon receipt of a notification of a vacancy, the state party central committee notified pursuant to subsection (3) has 30 days to forward to the governor a list of three prospective appointees, each of whom must be a resident of the district represented by the former incumbent.

(b) If the governor does not select an appointee from the list forwarded pursuant to subsection (4)(a) within 15 days, the central committee shall, within 15 days, forward a second list of three prospective appointees, each of whom must be a resident of the district represented by the former incumbent. The second list may not contain a name submitted on the first list. Within 15 days of receipt of the second list, the governor shall select an appointee from either list.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part); amd. Sec. 1979, Ch. 56, L. 2009; amd. Sec. 1, Ch. 226, L. 2015.

Cross-References

Vacancy in Executive Branch office, Art. VI, sec. 6 and 14, Mont. Const.; Title 2, ch. 16, part 5.
Powers and duties of Governor, 2-15-201.

69-1-107. Presiding officer of commission. A presiding officer must be selected by the commission from its membership at the first meeting of each year after a general election.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part); amd. Sec. 1980, Ch. 56, L. 2009.

Cross-References

Commission as head of Department of Public Service Regulation, 2-15-2601.

69-1-108. Repealed. Sec. 5, Ch. 35, L. 2009.

History: (1)En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R.C.M. 1921; rep. in part by Ch. 176, L. 1931; re-en. Sec. 3783, R.C.M. 1935; Sec. 72-105, R.C.M. 1947; (2)En. Sec. 9, Ch. 37, L. 1907; Sec. 4371, Rev. C. 1907; re-en. Sec. 3790, R.C.M. 1921; re-en. Sec. 3790, R.C.M. 1935; Sec. 72-112, R.C.M. 1947; R.C.M. 1947, 72-105(part), 72-112; amd. Sec. 2, Ch. 43, L. 1979.

69-1-109. Repealed. Sec. 5, Ch. 35, L. 2009.

History: En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R.C.M. 1921; rep. in part by Ch. 176, L. 1931; re-en. Sec. 3783, R.C.M. 1935; R.C.M. 1947, 72-105(part).

69-1-110. Conduct of commission business. (1) The commission shall hold sessions at times and places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction of business.

(2) The members of the commission may administer oaths and affirmations.

(3) The commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings concerning railroad companies and other parties before it in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R.C.M. 1921; re-en. Sec. 3781, R.C.M. 1935; amd. Sec. 10, Ch. 315, L. 1974; R.C.M. 1947, 72-103.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Investigations by Public Service Commission, 69-2-102.

69-1-111. Reimbursement for expenses. The commission and its staff are entitled to reimbursement for travel expenses, as provided for in 2-18-501 through 2-18-503. Expenditures must be sworn to by the person who incurred the expenses and be approved by the presiding officer of the commission or the presiding officer's designee.

History: Ap. p. Sec. 32, Ch. 52, L. 1913; re-en. Sec. 3912, R.C.M. 1921; re-en. Sec. 3912, R.C.M. 1935; amd. Sec. 47, Ch. 439, L. 1975; amd. Sec. 1, Ch. 205, L. 1977; Sec. 70-134, R.C.M. 1947; Ap. p. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R.C.M. 1921; re-en. Sec. 3785, R.C.M. 1935; amd. Sec. 11, Ch. 315, L. 1974; amd. Sec. 49, Ch. 439, L. 1975; Sec. 72-107, R.C.M. 1947; R.C.M. 1947, 70-134, 72-107; amd. Sec. 2, Ch. 35, L. 2009; amd. Sec. 1982, Ch. 56, L. 2009.

69-1-112. Prohibition on acceptance of favors from railroads. (1) Public service commissioners or their staff may not, directly or indirectly, solicit or request from or recommend to any railroad corporation or any officer, attorney, or agent the appointment of any person to any place or position, and any railroad corporation or its attorney or agent may not offer any place, appointment, or position or other consideration to commissioners or their staff. Commissioners and their staff may not accept, receive, or request any pass from any railroad in this state for themselves or for any other person, except as otherwise provided in 69-1-111, or any present, gift, or gratuity of any kind from any railroad corporation.

(2) A request or acceptance, except as specified in 69-1-111, of any place or position, pass, present, gift, or other gratuity referred to in subsection (1) results in forfeiture of the office of the commissioner or the staff requesting or accepting the same. A person violating any of the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R.C.M. 1921; re-en. Sec. 3813, R.C.M. 1935; amd. Sec. 14, Ch. 315, L. 1974; R.C.M. 1947, 72-136; amd. Sec. 3, Ch. 35, L. 2009.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.
Governmental code of fair practices, Title 49, ch. 3.

69-1-113. Removal or suspension of commissioner. If a commissioner fails to perform the commissioner's duties as provided in this title, the commissioner may be removed from office as provided by 45-7-401. Upon complaint made and good cause shown, the governor may suspend any commissioner, and if, in the governor's judgment the exigencies of the case require, the governor may appoint temporarily some competent person to perform the duties of the suspended commissioner during the period of the suspension.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 3, Ch. 43, L. 1979; amd. Sec. 1983, Ch. 56, L. 2009.

Cross-References

Governmental code of fair practices, Title 49, ch. 3.

69-1-114. Fees. (1) Each fee charged by the commission must be reasonable.

(2) Except for a fee assessed pursuant to 69-3-204(2), 69-3-1204(6)(b), 69-3-1207(5)(a), 69-3-1612(4), or 69-12-423(2), a fee set by the commission may not exceed $500.

(3) All fees collected by the commission under 69-3-1204(6)(b) must be deposited in an account in the special revenue fund. Funds in this account must be used as provided in 69-3-1204(6)(b).

(4) All fees collected by the commission under 69-3-1612(4) must be treated as financing costs and used in accordance with a financing order issued in accordance with 69-3-1606.

History: En. Sec. 3, Ch. 588, L. 1983; amd. Sec. 4, Ch. 509, L. 2003; amd. Sec. 1, Ch. 224, L. 2005; amd. Sec. 4, Ch. 491, L. 2007; amd. Sec. 20, Ch. 442, L. 2019; amd. Sec. 5, Ch. 449, L. 2019; amd. Sec. 1, Ch. 632, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 632, L. 2025. Amendment effective July 1, 2025.

Cross-References

Fees to be charged by Commission, 69-3-204.

69-1-115. Commission recordkeeping and employment of personnel. (1) The commission shall keep a full and complete record of all its proceedings and preserve at the office of the commission all books, maps, documents, and papers entrusted to its care.

(2) The commission may appoint secretaries, stenographers, inspectors, experts, and other persons whenever determined necessary by the commission to perform its duties.

History: En. Sec. 1, Ch. 35, L. 2009.

Part 2
Consumer Committee and Consumer Counsel

Part Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2.

Penalties for violation of this part, 69-2-205.

69-1-201. Definitions. As used in this part and part 2 of chapter 2, the following definitions apply:

(1) "Committee" means the legislative consumer committee provided for in Title 5, chapter 15, part 1.

(2) "Consumer counsel" means the consumer counsel provided for in Title 5, chapter 15, part 2.

(3) "Regulated companies" means all those organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation or the public service commission or any successor agency.

History: Ap. p. Sec. 2, Ch. 65, L. 1973; Sec. 70-702, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 70-702(part).

69-1-202 through 69-1-210 reserved.

69-1-211. Meetings of committee. The committee shall meet at least once each quarter to advise and consult with the consumer counsel.

History: En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977; R.C.M. 1947, 70-704(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-1-212. Compensation of committee members. Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977; R.C.M. 1947, 70-704(part).

69-1-213 through 69-1-220 reserved.

69-1-221. Staff of consumer counsel. The consumer counsel may, with the approval of the committee, appoint employees and consultants necessary to carry out the provisions of this part and part 2 of chapter 2, within the limits of legislative appropriation.

History: En. Sec. 6, Ch. 65, L. 1973; R.C.M. 1947, 70-706.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

69-1-222. Annual report. (1) The consumer counsel shall prepare and submit a yearly report and other interim reports to the consumer committee that the consumer counsel determines advisable concerning the consumer counsel's activities during the year. The consumer counsel also may recommend appropriate remedial legislation to the committee.

(2) The annual report and any recommendations for remedial legislation prepared in accordance with subsection (1) must also be provided to the energy and technology interim committee in accordance with 5-11-210.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(7); amd. Sec. 1984, Ch. 56, L. 2009; amd. Sec. 96, Ch. 261, L. 2021; amd. Sec. 9, Ch. 625, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 625, L. 2025. Amendment effective May 13, 2025.

69-1-223. Funding of office of consumer counsel. (1) There is an account in the state special revenue fund to which all fees collected under this section must be deposited and from which all appropriations to the office of the consumer counsel must be paid. An appropriation to the office of the consumer counsel may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall:

(a) within 30 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement, in a form that the commission and department may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion of a quarter, separately stating gross revenue from sales to other regulated companies for resale; and

(b) at that time pay to the department of revenue a fee based on a percentage of the gross operating revenue reported, as determined by the department of revenue under 69-1-224.

(3) The amount of money which may be raised by the fee on the regulated companies during a fiscal year may not be increased, except as provided in 69-1-224(1)(c), from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(1), (2); amd. Sec. 1, Ch. 280, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 647, L. 1987; amd. Sec. 1, Ch. 508, L. 1993.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.
Fund structure, Title 17, ch. 2.

69-1-224. Determination of fee — reporting. (1) On or before August 31 of each year, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection (2), of the amount determined in subsection (1)(a) that will produce an amount equal to the current appropriation to the office of the consumer counsel, except that a regulated company owned and operated by any municipal corporation within this state may not be required to pay a sum in excess of 0.06 of 1% of its gross operating revenue;

(c) adjust the percentage multiplier computed in subsection (1)(b) to ensure that sufficient funds are generated to meet the appropriation and that excess funds are not generated or retained by:

(i) determining the appropriation to the office of the consumer counsel for the previous fiscal year and comparing it to the fees collected from the previous fiscal year;

(ii) reducing or increasing the percentage determined in subsection (1)(b) for the current year in order to account for any difference determined in subsection (1)(c)(i); and

(iii) if necessary, reducing the revenue to be collected for the current year by any funds remaining unspent at the close of the prior fiscal year; and

(d) give notice by mail to each regulated company of the percentage to be applied to the gross operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid.

(2) (a) The department of revenue shall adjust the percentage multiplier if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days' notice of any change in the percentage multiplier.

(d) Any change in the percentage multiplier is effective at the beginning of the next calendar quarter.

(3) In the event that the fee charged in 1 year is in excess of the amount actually expended in that year, the excess must be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of the fiscal year must be used to reduce the percentage calculated in subsection (1) in the subsequent fiscal year.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of the notice required by subsection (1), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part.

(5) (a) By January 15 and July 15 of each year, the department of revenue shall submit a written report to the legislative consumer committee identifying the following:

(i) the amount of total fees collected by the department dedicated to the consumer counsel;

(ii) the amount of fees collected in the previous 2 quarters and the percentage multiplier applied; and

(iii) the total amount of collections in the previous fiscal year and the percentage multiplier applied.

(b) The report must be provided in an electronic format.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(3), (4); amd. Sec. 2, Ch. 280, L. 1979; amd. Sec. 3, Ch. 647, L. 1987; amd. Sec. 2, Ch. 508, L. 1993; amd. Sec. 1, Ch. 117, L. 1995; amd. Sec. 257, Ch. 42, L. 1997; amd. Sec. 2, Ch. 350, L. 2017.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

69-1-225. Computation and collection of fee in absence of statement — penalty and interest. (1) If a regulated company or an officer or employee of a regulated company fails, neglects, or refuses to file the statement required by 69-1-223(2), the department of revenue may after the time for filing has expired proceed to inform itself, as best it may, regarding the regulated company's gross operating revenue from all activities regulated by the commission within the state for the calendar quarter, quarters, or portion thereof and may determine and fix the amount of the consumer counsel fee due.

(2) (a) When a deficiency is determined and the fee becomes final, the department shall mail a notice and demand for payment to the regulated company. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(c) The taxpayer may seek review of the department's action pursuant to 15-1-211.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to file the statement is provided to the department.

History: En. Sec. 1, Ch. 195, L. 1979; amd. Secs. 8, 19, Ch. 676, L. 1991; amd. Sec. 27, Ch. 811, L. 1991.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

Penalties for violation, 69-2-205.

69-1-226. Failure to pay fee — penalty and interest — collection of fee. (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of the fee. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a notice, pursuant to 15-1-211, setting forth the amount of the fee, penalty, and interest. The taxpayer may seek review of the department's action pursuant to 15-1-211.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department.

History: En. Sec. 2, Ch. 195, L. 1979; amd. Sec. 51, Ch. 439, L. 1981; amd. Sec. 9, Ch. 676, L. 1991; amd. Sec. 28, Ch. 811, L. 1991.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.
Warrant for distraint, Title 15, ch. 1, part 7.
Penalties for violation, 69-2-205.

69-1-227. Warrant for distraint. If the fee imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: En. Sec. 3, Ch. 195, L. 1979; amd. Sec. 52, Ch. 439, L. 1981.

Cross-References

Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Liens, Title 71, ch. 3.

69-1-228. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 11, Ch. 676, L. 1991.

69-1-229 reserved.

69-1-230. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the

overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

History: En. Sec. 15, Ch. 676, L. 1991.

Part 3 reserved

Part 4

Funding of Department of Public Service Regulation

69-1-401. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public service regulation provided for in Title 2, chapter 15, part 26.

(2) "Regulated companies" means all organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation, the public service commission, or any successor agency. The term does not include motor carriers regulated pursuant to Title 69, chapter 12.

History: En. Sec. 1, Ch. 32, Sp. L. June 1986.

69-1-402. Funding of department of public service regulation. (1) All fees collected under this section and any other fees, except as provided in 69-1-114(3), must be deposited in an account in the state special revenue fund to the credit of the department. An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 30 days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under 69-1-403.

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased, except as provided in 69-1-224(1)(c), from the amount appropriated to the department by the legislature for that fiscal year, including both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature.

History: En. Sec. 2, Ch. 32, Sp. L. June 1986; amd. Sec. 4, Ch. 647, L. 1987; amd. Sec. 3, Ch. 508, L. 1993; amd. Sec. 2, Ch. 224, L. 2005; amd. Sec. 16, Ch. 6, Sp. L. November 2017.

69-1-403. Determination and collection of fee. (1) The fee provided for in 69-1-402 to be paid by regulated companies must be determined in the manner set forth in 69-1-224 for determining the consumer counsel fee, except that gross revenues from sales to other regulated companies for resale, as calculated by the public service commission, must be excluded from the determination of the total gross operating revenue pursuant to 69-1-224.

(2) The department of revenue shall give notice by mail to each regulated company of the percentage determined pursuant to 69-1-224 and this section to be applied to gross operating revenues reported under 69-1-223, excluding gross revenues from sales to other regulated companies for resale.

(3) The fee provided for in 69-1-402 may be computed and collected in the manner provided in 69-1-225 through 69-1-227.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of the notice required by 69-1-224(1), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part.

History: En. Sec. 3, Ch. 32, Sp. L. June 1986; amd. Sec. 5, Ch. 647, L. 1987; amd. Sec. 4, Ch. 508, L. 1993.

69-1-404. Repealed. Sec. 56, Ch. 349, L. 1993.

History: En. Sec. 5, Ch. 32, Sp. L. June 1986; amd. Sec. 45, Ch. 112, L. 1991.

CHAPTER 2
GENERAL REGULATORY PROVISIONS

Part 1 — Role of Public Service Commission

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Chapter Cross-References

Relocation of utilities' facilities, 60-4-402.

Part 1
Role of Public Service Commission

69-2-101. Adoption of rules for rate cases. The commission shall adopt such rules of practice and procedure for the filing, investigation, and hearing of petitions or applications to increase or decrease rates and charges of railroads, motor carriers, and public utilities as the commission finds necessary or appropriate to enable it to reach a final decision in an orderly manner.

History: En. 70-104.1 by Sec. 1, Ch. 137, L. 1977; R.C.M. 1947, 70-104.1.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.
Public transportation issues — Department of Transportation to represent state, 60-21-101.

69-2-102. Role of commission when consumer counsel protests. In any case involving an application by a regulated entity to the commission for authority to increase its rates that is actively contested by the consumer counsel, the commission shall leave representation of the interests of consumers to the consumer counsel when the consumer counsel timely petitions to become a party to the case. This section does not prohibit the commission or its staff from investigating and interrogating in any hearing to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address the issue and counsel fails to introduce sufficient or adequate evidence.

History: En. 70-707.1 by Sec. 1, Ch. 474, L. 1977; R.C.M. 1947, 70-707.1; amd. Sec. 1985, Ch. 56, L. 2009.

Cross-References

Conduct of hearing, 69-3-326.
Immunity for witnesses, 69-3-329.

69-2-103. Hearings examiner. (1) (a) Except as provided in subsections (1)(b) and (1)(c), if requested by the applicant, the commission shall appoint a hearings examiner for proceedings under this title.

(b) If four public service commissioners determine that a hearings examiner is not required for a proceeding, the commission is not required to appoint a hearings examiner.

(c) If three public service commissioners determine that a hearings examiner is necessary for a proceeding, the commission shall appoint a hearings examiner.

(d) The determinations in this subsection (1) must be made by a vote of the commission during a public meeting.

(e) If a hearings examiner is appointed at the request of an applicant in accordance with subsection (1)(a), the commission may assess the costs to the applicant.

(f) If the public service commission determines a hearings examiner is required in accordance with subsection (1)(c), the commission shall cover the costs and may not pass those costs on to an applicant.

(g) The commission may disqualify the hearings examiner and appoint another hearings examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should be disqualified.

(2) The hearings examiner may not communicate with any party or a party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate. The commission may not communicate with any party before the conclusion of the hearing.

(3) The commission may adopt rules necessary to implement the utilization of a hearings examiner in accordance with this section.

History: En. Sec. 4, Ch. 449, L. 2019.

Part 2
Role of Consumer Counsel

Part Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2.

69-2-201. Appearance at hearings by counsel. The consumer counsel may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence, and other matters.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(1).

Cross-References

Conduct of hearing, 69-3-326.

Immunity for witnesses, 69-3-329.

69-2-202. Institution of and intervention in proceedings involving regulated companies. (1) The consumer counsel may institute proceedings before the commission against regulated companies.

(2) The consumer counsel may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof, including review of decisions rendered by or failure to act by the commission and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to 27-19-203.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(2), (5); amd. Sec. 4, Ch. 43, L. 1979.

69-2-203. Investigatory powers of counsel. (1) The consumer counsel has all the investigatory powers necessary to perform the counsel's duties as provided in this section and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act. It is the specific intent of this section to provide the authority and availability of the process of discovery to the consumer counsel in administrative contested-case procedure. Violations of discovery procedure must be heard and administered by the district court. In the event of an appeal to district court for enforcement of discovery procedures, the time limits imposed by 69-3-302 and 69-3-303 are suspended pending order of the district court.

(2) The consumer counsel may examine in any commission proceedings, under oath, any officer, director, manager, or employee of any regulated company and may inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of the consumer counsel's duties.

History: **En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(3), (4); amd. Sec. 1986, Ch. 56, L. 2009.**

Cross-References

Montana Administrative Procedure Act — contested cases — discovery, 2-4-602.

69-2-204. Representation of consuming public. (1) The consumer counsel shall meet and confer with members or representatives of the consuming public at times and places that the consumer counsel determines appropriate.

(2) The consumer counsel has other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(6), (8); amd. Sec. 1987, Ch. 56, L. 2009.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-2-205. Violations. (1) Any regulated company or any officer or employee of any regulated company who, with intent to evade any fee or any requirement of this part or part 2 of chapter 1 or any lawful requirement of the commission thereunder, fails to pay the fee, to make, render, sign, or verify any statement, or to supply any information, within the time required by or under the provisions of this part or part 2 of chapter 1, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement or supplies any false or fraudulent information:

(a) shall be liable to a penalty of not more than $1,000, to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction; and

(b) shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed $1,000 or be imprisoned in the county jail not to exceed 1 year or both, at the discretion of the court.

(2) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this part or part 2 of chapter 1, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied.

History: **En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(5), (6).**

Cross-References

Criminal responsibility of corporation, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
False swearing, 45-7-202.
Unsworn falsification to authorities, 45-7-203.

69-2-206 through 69-2-210 reserved.

69-2-211. Notice to consumer counsel. In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the consumer counsel.

History: **En. 70-710 by Sec. 1, Ch. 212, L. 1974; R.C.M. 1947, 70-710.**

69-2-212. Notice to advise public of availability of consumer counsel. All forms of notice of public hearings conducted by the commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the consumer counsel and its availability to function on behalf of members of the consuming public.

History: **En. 70-711 by Sec. 2, Ch. 212, L. 1974; R.C.M. 1947, 70-711.**

69-2-213 through 69-2-215 reserved.

69-2-216. Customer fiscal impact analysis — requirements. (1) Within 10 days of receiving an application pursuant to subsection (1)(a) or (1)(b), the department of environmental quality shall notify the office of consumer counsel that it is in receipt of:

(a) a permit application pursuant to Title 75, chapter 2, 5, or 10, for a new electrical generation facility; or

(b) an application for a certificate under the Montana Major Facility Siting Act for a new facility or upgrade, as defined in 75-20-104.

(2) The office of consumer counsel shall complete an analysis outlining the fiscal impacts of the project on electricity customers in Montana. The analysis must include an estimation of how customers' rates may be impacted.

(3) (a) Except as provided in subsection (3)(b), the analysis must be completed within 30 days of receipt of the notice from the department.

(b) The department shall extend the 30-day deadline if compliance with the deadline is not necessary to comply with the requirements of subsection (4).

(4) The analysis must be provided to the department and incorporated into the department's environmental review, including draft documents released for public comment.

(5) (a) Within 5 days of the close of the public comment period for an application referred to in subsection (1)(a) or (1)(b), the department shall forward public comments related to the analysis to the consumer counsel.

(b) The consumer counsel shall respond to the comments and return the responses to the department within 30 days, and the responses must be included in the final environmental reviews.

History: En. Sec. 1, Ch. 469, L. 2007.

69-2-217. Exemptions — definition. (1) Projects proposed by utilities, as defined in 69-8-103, or their affiliates are exempt from the analysis required by 69-2-216 if the utility or affiliate files the necessary tariffs, rate schedules, and other requisite information with the commission or the federal energy regulatory commission.

(2) For the purposes of this section, "affiliate" means an entity wholly or partially owned by, closely connected to, or associated with a utility.

History: En. Sec. 2, Ch. 469, L. 2007; amd. Sec. 1, Ch. 99, L. 2009.

Part 3
Wildfire Mitigation

Part Compiler's Comments

Effective Date: Section 7, Ch. 681, L. 2025, provided that this part is effective on passage and approval. Approved May 13, 2025.

69-2-301. Definitions. As used in this part, the following definitions apply:

(1) "Approval authority" means the commission for a regulated utility, the board of trustees for an electric cooperative, the city council or city commission for a municipal utility, or the appropriate body responsible for corporate governance of any other type of electric facilities provider.

(2) "Commission" has the same meaning as provided in 69-1-101.

(3) "Department" means the department of natural resources and conservation, as provided in 2-15-3301.

(4) "Electric cooperative" means a cooperative organized under Title 35, chapter 18, or a similar state law for providing electricity to the public in Montana.

(5) "Electric facilities" means any equipment used for the transmission or distribution of electricity to the public, including but not limited to generation and energy storage resources, substations, switchyards, poles, towers, transformers, conductors, and relaying, sectionalizing, and protective equipment, such as arrestors.

(6) "Electric facilities provider" means any of the following that engages in electric transmission and distribution activities as defined in this section:

(a) an operator, regulated utility, or electric cooperative;

(b) a municipally owned utility;

(c) an entity owning electric facilities in the state without regard to the jurisdiction of the commission; or

(d) a transmitting utility under the jurisdiction of the federal energy regulatory commission.

(7) "Electric transmission and distribution activities" means a condition, activity, or facility directly related to the conveyance and distribution of electrical energy to a person, facility, transmission, or distribution system in the state.

(8) "Jointly owned electric facility" means an identified set of electric facilities that is jointly owned by multiple parties and operated by a designated operator.

(9) "Operator" means the person or entity designated by the owners of a jointly owned electric facility as defined in this section as responsible for the operation and maintenance of jointly owned electric facilities.

(10) "Regulated utility" means a public electric utility regulated by the commission under Title 69, chapter 3.

(11) "Wildfire" has the same meaning as "forest or range fire" as defined in 50-63-104 and, for the purposes of this part, a fire ignited by electric facilities or activities associated with electric transmission and distribution activities, regardless of whether the fire's ignition occurs within an incorporated municipality.

(12) "Wildfire mitigation plan" means an electric facilities provider's written plan, including any related components, that identifies risks associated with wildfire and strategies to mitigate or reduce those risks.

History: En. Sec. 1, Ch. 681, L. 2025.

69-2-302. Electric facilities provider — wildfire — wildfire mitigation plan approval. (1) An electric facilities provider shall prepare a wildfire mitigation plan in accordance with this section and submit the plan to its approval authority and commence implementation of its wildfire mitigation plan no later than December 31, 2025. An electric facilities provider shall resubmit an updated or subsequent wildfire mitigation plan to its approval authority at least every 3 years.

(2) A wildfire mitigation plan must include a description of:

(a) areas in which the electric facilities provider has electric facilities or electric transmission and distribution activities that may be subject to a heightened risk of wildfire;

(b) the strategies and programs that the electric facilities provider will use to inspect, maintain, repair, and operate its electric facilities;

(c) the strategies and programs that the electric facilities provider will use to perform vegetation management;

(d) the strategies for modifications or upgrades to electric facilities and preventative programs that the electric facilities provider will employ to reduce the risk of its electric facilities igniting a wildfire;

(e) the strategies and methods for de-energizing power lines and modifying electric facility operations to mitigate potential wildfires taking into consideration the ability of the electric facilities provider to reasonably access the proposed electric facility to be de-energized, the balance of the risk of wildfire with the need for continued supply of electricity to a community, and any potential impact to public safety, first responders, and health and communications infrastructure;

(f) the methods the electric facilities provider intends to use to restore its electrical system in the event systems are de-energized for the prevention of a wildfire;

(g) the estimated incremental costs associated with implementing the plan, including system improvements and upgrades for a regulated utility;

(h) community outreach and public awareness efforts before and during a wildfire season; and

(i) potential participation, if applicable, with state or local wildland fire protection plans or wildfire mitigation plans.

(3) An electric cooperative must present incremental costs associated with implementing a wildfire mitigation plan to its approval authority for consideration when reviewing the plan. However, those costs may not be a part of the wildfire mitigation plan itself.

(4) For the purposes of this part, the approval authority for an electric facilities provider's wildfire mitigation plan shall:

(a) initially review an electric facilities provider's wildfire mitigation plan;

(b) consider any input from a federal, tribal, state, or local entity, or other interested persons during a public comment period not to exceed 45 days; and

(c) after a public meeting and no more than 60 days after the close of public comment:

(i) approve the wildfire mitigation plan or identify any deficiencies in the plan; and

(ii) provide required modifications in writing with the opportunity for the electric facilities provider to correct the deficiencies and resubmit the plan for approval.

(5) The department and Montana disaster and emergency services shall review a wildfire mitigation plan submitted to the commission and within the public comment period provide comments and recommendations regarding aspects of the plan within each of their jurisdictions.

(6) The approval authority shall approve the wildfire mitigation plan if the approval authority determines the wildfire mitigation plan contains the required components in subsection (2), is in the public interest, and reasonably balances the incremental costs of implementing the plan with the risk of a potential wildfire.

(7) No later than June 1 of each year, the electric facilities provider shall submit to its approval authority a report summarizing the electric facilities provider's wildfire mitigation efforts and compliance with its currently authorized wildfire mitigation plan.

(8) For any jointly owned electric facilities, the operator shall prepare and implement the required wildfire mitigation plan for the jointly owned electric facilities. If an owner of a jointly owned electric facility is a regulated utility, the commission is the approval authority whether or not the operator is a regulated utility. The operator's submission and implementation of a wildfire mitigation plan as required by this subsection satisfies the obligations under this section for the jointly owned electric facility only.

(9) In accordance with the Montana Administrative Procedure Act, the commission may make any necessary rules establishing procedures for the review and comment on a regulated utility's wildfire mitigation plan, including for the appointment of a technical master to determine whether the wildfire mitigation plan contains the required components in subsection (2).

(10) Nothing in this section may be construed to create a new liability, basis for claim, or separate legal cause of action arising from the review or approval of a wildfire mitigation plan when none would exist otherwise.

History: En. Sec. 2, Ch. 681, L. 2025.

69-2-303. Electric facilities provider — wildfire — cause of action — standard of care — damages. (1) The purpose of this section is to set statutory criteria governing the civil liability of an electric facilities provider for wildfire-related claims. An electric facilities provider has an obligation to serve the public, and a standard of strict liability may not be applied to an electric facilities provider as follows:

(a) in a cause of action alleging the electric facilities provider's electric facilities or electric transmission and distribution activities caused wildfire-related damages; or

(b) in a cause of action alleging an electric facilities provider's wildfire mitigation activities conducted in accordance with a wildfire mitigation plan caused damages.

(2) An electric facilities provider may be found civilly liable only under the provisions of this section, and may not be found civilly liable under any other statute, theory of recovery, or common law claim, for wildfire-related injury or damages arising from the electric facilities provider's electric facilities or electric transmission and distribution activities or for injury or damages arising from any act or omission of the electric facilities provider associated with implementing a wildfire mitigation plan.

(3) An electric facilities provider may be found civilly liable for:

(a) wildfire-related injury or damages arising from the electric facilities provider's electric facilities or electric transmission and distribution activities; or

(b) injury or damages arising from an act or omission of the electric facilities provider associated with implementing a wildfire mitigation plan only if the party seeking recovery establishes:

(i) the electric facilities provider failed to exercise the degree of care, skill, and learning expected of a reasonable, similarly situated electric facilities provider at the time in the state, acting under the same or similar circumstances; and

(ii) the failure was the proximate cause of the injury to person or property for which recovery is sought.

(4) After an electric facilities provider has commenced implementation of its wildfire mitigation plan, in an action against an electric facilities provider seeking wildfire-related damages arising from the electric facilities provider's electric facilities or electric transmission and distribution activities, there is a rebuttable presumption that the electric facilities provider acted reasonably if, with respect to the place of the wildfire's ignition, the electric facilities provider substantially followed a wildfire mitigation plan that was approved in accordance with 69-2-302, provided that evidence related to the electric facilities provider's actual incremental costs associated with implementing a wildfire mitigation plan may not be considered in determining whether the electric facilities provider substantially followed its wildfire mitigation plan. The presumption in this subsection may be controverted by other evidence.

(5) In an action against an electric facilities provider under this section, if a plaintiff has proved liability, as required:

(a) a plaintiff may recover for real and personal property damage pursuant to 50-63-104;

(b) in the event of a bodily injury or death, a plaintiff may recover:

(i) economic damages, including medical expenses and lost wages; and

(ii) noneconomic damages;

(c) a plaintiff may not recover noneconomic losses unless the plaintiff suffered bodily injury or death;

(d) an electric facilities provider may not be assessed punitive damages unless there is a showing, by clear and convincing evidence, that the electric facilities provider's actions were grossly negligent or intentional. An electric facilities provider's acts or omissions may not be considered grossly negligent if the electric facilities provider substantially followed its wildfire mitigation plan with respect to the place of ignition. The availability of punitive damages is otherwise subject to the provisions of 27-1-220 and 27-1-221.

(e) a person who obtains payment pursuant to a policy of insurance for damages resulting from a wildfire loss is deemed to have been made whole exclusively for purposes of an insurer's right to subrogation under this section.

(6) A civil action against an electric facilities provider under this section must be commenced within 3 years from the date the plaintiff first incurred injury or damages, without regard to when the injury or damages are discovered.

(7) This section does not affect express contractual rights of any person or entity in any way involving communications facilities or the shared use of electric facilities or pole attachments.

History: En. Sec. 3, Ch. 681, L. 2025.

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REGULATION OF UTILITIES

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Chapter Cross-References

Local government provisions not to modify this chapter, 7-3-4302.
Metropolitan sanitary district ratemaking, 7-13-144.
Emergency regulation of utilities, 10-3-505.
Contract for provision of utility service exempt from plain language in contracts provisions, 30-14-1104.
Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.
Special assessment — telecommunications services for the handicapped, 53-19-311.
Relocation of utilities' facilities, 60-4-402.

Part 1
Role of Commission and Power of Eminent Domain

69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, includes every corporation, both public and private, company, individual, association of individuals, and their lessees, trustees, or receivers appointed by any court that own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities or towns or elsewhere;

(f) regulated telecommunications service.

(2) The term does not include:

(a) privately owned and operated water, sewer, or water and sewer systems that do not serve the public;

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23;

(c) except as provided in chapter 7, municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44; or

(d) a person exempted from regulation as a public utility as provided in 69-3-111.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part); amd. Sec. 3, Ch. 631, L. 1979; amd. Sec. 8, Ch. 607, L. 1981; amd. Secs. 4, 5, Ch. 588, L. 1983; amd. Sec. 1, Ch. 195, L. 1985; amd. Sec. 11, Ch. 546, L. 1985; amd. Sec. 9, Ch. 214, L. 2011.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.
Utility defined, 60-4-401, 75-20-104.
Records of public utilities, 69-3-202.
Montana Telecommunications Act, Title 69, ch. 3, part 8.

69-3-102. Supervision and regulation of public utilities. The commission is hereby invested with full power of supervision, regulation, and control of such public utilities, subject to the provisions of this chapter and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part).

Cross-References

Prohibited contributions for ballot issues, 13-35-236.
Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-103. General powers and rulemaking authority of commission. (1) In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure and to do all things necessary and convenient in the exercise of the powers conferred by this chapter upon the commission; provided that nothing in this chapter shall be construed as vesting judicial powers on said commission or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test in a court of competent jurisdiction the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

(2) The commission shall have the power to:

(a) adopt reasonable and proper rules relative to all inspections, tests, audits, and investigations;

(b) adopt and publish reasonable and proper rules to govern its proceedings; and

(c) regulate the mode and manner of all investigations and hearings of public utilities and other parties before it.

History: (1)En. Sec. 4, Ch. 52, L. 1913; re-en. Sec. 3882, R.C.M. 1921; re-en. Sec. 3882, R.C.M. 1935; Sec. 70-104, R.C.M. 1947; (2)En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R.C.M. 1921; re-en. Sec. 3894, R.C.M. 1935; Sec. 70-116, R.C.M. 1947; R.C.M. 1947, 70-104, 70-116(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-104. Hearings to be open. All hearings shall be open to the public.

History: En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R.C.M. 1921; re-en. Sec. 3894, R.C.M. 1935; R.C.M. 1947, 70-116(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-3-105. Access to commission records and reports — protective order. (1) Except as provided in subsection (2), the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission are open to the public during regular business hours, as defined in 2-16-117.

(2) The commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, or other information that must be protected under law, as required to carry out its regulatory functions.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R.C.M. 1921; re-en. Sec. 3889, R.C.M. 1935; amd. Sec. 29, Ch. 93, L. 1969; amd. Sec. 7, Ch. 315, L. 1974; R.C.M. 1947, 70-111; amd. Sec. 1, Ch. 77, L. 1987; amd. Sec. 1, Ch. 144, L. 2005.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Public records, Title 2, ch. 6.

69-3-106. Supervision of management of public utilities. (1) The commission has the authority to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which the business is conducted, and has the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

(2) The commission, any commissioner, or any person or persons employed by the commission for that purpose, upon demand, has the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of the public utility in relation to its business and affairs. Any person, other than one of the commissioners, who makes the demand shall produce the person's authority to make the inspection.

(3) The commission may require by order or subpoena, to be served on any public utility in the same manner that a summons is served in a civil action in the district court, the production, within this state and at a time and place that it may designate, of any books, accounts, papers, or records kept by a public utility in any office or place outside of the state or verified copies in lieu of the books, accounts, papers, or records, if the commission orders, so that that an examination of the books, accounts, papers, or records may be made by the commission or under its direction. Any public utility failing or refusing to comply with any an order or subpoena is subject to the liability provided for in 69-3-206.

History: **En. Sec. 15, Ch. 52, L. 1913; re-en. Sec. 3895, R.C.M. 1921; re-en. Sec. 3895, R.C.M. 1935; R.C.M. 1947, 70-117; amd. Sec. 1988, Ch. 56, L. 2009.**

Cross-References

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

Effect of noncooperation or noncompliance with Public Service Commission orders, 69-3-206, 69-3-208.

69-3-107. Investigation and reports of accidents. (1) The commission, some member of the commission, or some person deputed by it shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state resulting in death or injury to any person that requires 3 days or more of hospitalization. The report of the accident must be filed in the office of the commission.

(2) A public utility operating within this state shall promptly upon the occurrence of any accident in the public utility's operation and resulting in death or injury to any person that requires hospitalization report the accident within the next 2 business days, followed by a written report that states the time and place of the accident, the names of persons killed or injured, and in concise form the nature and cause of the accident. The commission shall prescribe forms for the purpose of making these written reports.

History: **En. Sec. 27, Ch. 52, L. 1913; re-en. Sec. 3907, R.C.M. 1921; re-en. Sec. 3907, R.C.M. 1935; amd. Sec. 1, Ch. 472, L. 1977; R.C.M. 1947, 70-129; amd. Sec. 1, Ch. 81, L. 1999.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Subpoena of witnesses, 69-3-327.

69-3-108. Standards for and examinations of products and services. (1) The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These are lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility and establish reasonable standards for examination and testing of the product or service and for the measurement of the product or service.

(3) The commission shall provide for the examination and testing of appliances used for the measuring of any product or service of a public utility. A consumer or user may have appliances tested upon payment of the fees fixed by the commission. The commission shall establish reasonable fees to be paid for testing appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of the request. These fees must be paid by the public utility and repaid to the complaining party if the quality or quantity of the product or the character of the service is found by the commission defective or insufficient in a degree to justify the demand for testing, or the commission may apportion the fees between the parties as justice may require.

(4) The commission may, in its discretion, purchase materials, apparatus, and standard measuring instruments for examinations and tests as it considers necessary.

(5) The commission or its agents, experts, or examiners may enter upon any premises occupied by a public utility for the purpose of making the examinations and tests provided in this chapter and set up and use on the premises any apparatus and appliances and occupy reasonable space for the examinations and tests. A public utility refusing to allow examinations to be made, as provided in this chapter, is subject to the penalties prescribed in 69-3-206.

(6) The standards and fees established by the commission pursuant to this section must be established through administrative rules or ordered tariff provisions, in accordance with the Montana Administrative Procedure Act.

History: **En. Sec. 10, Ch. 52, L. 1913; re-en. Sec. 3890, R.C.M. 1921; re-en. Sec. 3890, R.C.M. 1935; R.C.M. 1947, 70-112; amd. Sec. 1, Ch. 117, L. 1993.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-109. Ascertaining property values. The commission may, in its discretion, investigate and ascertain the value of the property of each public utility actually used and useful for the convenience of the public. The commission is not bound to accept or use any particular value in determining rates. However, if any value is used, the value may not exceed the original cost of the property, except that the commission may include all or some of an acquisition adjustment for certain property purchased by a public utility in the purchasing utility's rate base if the transfer of the property to the purchasing utility is in the public interest. In making the investigation, the commission may avail itself of all information contained in the assessment rolls of various counties or in the public records of the various branches of the state government or of any other information obtainable, and the commission may at any time on its own initiative make a revaluation of the property.

History: **En. Sec. 6, Ch. 52, L. 1913; re-en. Sec. 3884, R.C.M. 1921; re-en. Sec. 3884, R.C.M. 1935; amd. Sec. 1, Ch. 28, L. 1975; R.C.M. 1947, 70-106; amd. Sec. 1, Ch. 373, L. 1995.**

Cross-References

Assessment of public utilities in one county, 15-8-406.
Properties centrally assessed, 15-23-101.
Montana Major Facility Siting Act, Title 75, ch. 20.

69-3-110. Enforcement of public utility law. (1) The commission shall inquire into any neglect or violation of the laws of this state by any public utility, as hereinbefore defined, doing business in this state or by the officers, agents, or employees thereof. The commission shall enforce the provisions of this chapter and report all violations thereof to the attorney general.

(2) All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced and are prima facie lawful from the date of the order until changed or modified by the commission or in pursuance of part 4. All rules, practices, and services prescribed by the commission shall be enforced and enforcement actions shall be brought pursuant to the provisions of part 4 until the rules, practices, or services are changed or modified by the commission upon a satisfactory showing being made.

(3) Upon the request of the commission, it is the duty of the attorney general or the prosecuting attorney of any county to aid in any investigation, prosecution, hearing, or trial had under the provisions of this chapter and to institute and prosecute all actions or proceedings necessary for the enforcement of this chapter.

(4) Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state in the district court of any county having jurisdiction of the defendant. The attorney general shall be the counsel in any proceeding, investigation, hearing, or trial prosecuted or defended by the commission, as also shall any prosecuting attorney selected by the commission or other special counsel furnished the commission in any county where such action is pending.

(5) In addition to the other remedies provided by this chapter for the prevention and punishment of any violation of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this chapter and of the orders of the commission by proceedings in mandamus, by injunction, or by other civil remedies.

History: **En. Secs. 24, 25, 30, 31, Ch. 52, L. 1913; re-en. Secs. 3904, 3905, 3910, 3911, R.C.M. 1921; re-en. Secs. 3904, 3905, 3910, 3911, R.C.M. 1935; R.C.M. 1947, 70-126, 70-127, 70-132, 70-133; amd. Sec. 5, Ch. 43, L. 1979.**

Cross-References

Attorney General, Title 2, ch. 15, part 5.
County Attorney, Title 7, ch. 4, part 27.
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.
Penalties, 69-3-206, 69-3-207.
Judicial remedies, 69-5-111.

69-3-111. Persons with interest in property leased or to be sold to public utility — exemption. (1) Upon application, the commission may, by order, determine that any person not otherwise a public utility is not a public utility subject to the jurisdiction, control, or regulation of the commission under this title solely because the person owns or controls any plant or equipment, any part of or undivided interest in a plant or equipment, or any water right described in 69-3-101:

(a) that is leased or sold or held for lease or sale to any public utility or other lessee;

(b) the operation and use of which is vested by lease or other contract in a public utility or other lessee; or

(c) for a period of not more than 90 days after termination of any lease or contract described in subsection (1)(a) or (1)(b) or after the person gains possession of the property following a breach of a lease or contract.

(2) An order may not be revoked or modified by the commission unless there is a material change in the lease or contract terms forming the basis of the order.

(3) The commission may, upon application by a public utility, issue its order approving the terms of any lease or contract described in subsection (1)(a) or (1)(b) for the purpose of qualifying any party to the lease or contract for an exemption by the United States securities and exchange commission, or its successor, from the federal Energy Policy Act of 2005.

(4) A public utility, as lessee of any plant or equipment, any part of or undivided interest in a plant or equipment, or any water right described in 69-3-101, that is subject to any lease or contract described in this section shall comply with this title regarding the plant, equipment, or water right.

(5) Nothing in this section may be construed to alter or modify the authority of the commission to regulate the rates and services of a public utility that is subject to the provisions of this title.

History: En. Sec. 2, Ch. 195, L. 1985; amd. Sec. 32, Ch. 19, L. 2011.

Cross-References

Certificate of water right, 85-2-315.
Transfer of appropriation right, 85-2-403.

69-3-112. Evaluation of coal or other boiler fuel costs. (1) The purchases of coal or other boiler fuel for the generation of electricity by a public utility from a fuel supplier that is an affiliate of the public utility are subject to review by the commission to enable the commission to determine whether the costs incurred by the public utility are reasonable.

(2) In determining whether the costs incurred are reasonable, the commission shall compare the costs incurred by the public utility to the costs that the public utility would have incurred if the coal or other boiler fuel had been purchased from a different supplier under similar contract terms.

(3) The commission may disallow recovery in the rates charged by the public utility of any amount by which the costs incurred exceed the amount that the commission determines to be reasonable based on the comparison required under subsection (2).

(4) For the purposes of this section, the following definitions apply:

(a) "Affiliate" means a corporation or other entity wholly owned or controlled, directly or indirectly, by the public utility or by a corporation or other entity that wholly owns or controls, directly or indirectly, the public utility.

(b) "Different supplier" means a fuel supplier that is not an affiliate of the public utility that is subject to commission review under this section.

History: En. Secs. 1, 2, Ch. 166, L. 1995.

69-3-113. Power of eminent domain. A public utility as defined in 69-3-101 may acquire by eminent domain any interest in property, as provided in Title 70, chapter 30, for a public use authorized by law to provide service to the customers of its regulated service.

History: En. Sec. 1, Ch. 321, L. 2011.

Part 2
Requirements for Public Utilities

69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, or regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 5, Ch. 52, L. 1913; re-en. Sec. 3883, R.C.M. 1921; re-en. Sec. 3883, R.C.M. 1935; R.C.M. 1947, 70-105; amd. Sec. 12, Ch. 546, L. 1985.

Cross-References

Definition of public utility, 69-3-101.
Montana Telecommunications Act, Title 69, ch. 3, part 8.

69-3-202. Records of public utilities. (1) Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

(2) Every public utility engaged directly or indirectly in any other businesses than those mentioned in 69-3-101 shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other businesses, in which case all the provisions of this chapter shall apply with like force and effect to the books, accounts, papers, and records of such other businesses.

(3) The commission shall cause to be prepared suitable blanks for carrying out the purposes of this chapter and shall, when necessary, furnish such blanks to each public utility. No public utility shall keep any other books, accounts, papers, or records of the business transacted than those prescribed or approved by the commission.

(4) Each public utility shall have an office in one of the towns, villages, or cities in this state in which its property or some part thereof is located and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records required by the commission to be kept within the state shall at any time be removed from the state except upon such conditions as may be prescribed by the commission.

(5) Any commissioner or any person or persons authorized by the commission shall have the right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness and whether they are being kept in accordance with the rules and system prescribed by the commission.

History: (1) thru (4)En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3885, R.C.M. 1921; re-en. Sec. 3885, R.C.M. 1935; Sec. 70-107, R.C.M. 1947; (5)En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3887, R.C.M. 1921; re-en. Sec. 3887, R.C.M. 1935; Sec. 70-109, R.C.M. 1947; R.C.M. 1947, 70-107, 70-109.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-203. Annual report to commission. (1) The accounts of all public utilities must be closed annually on either June 30 or December 31. A balance sheet must be taken promptly from the accounts, and a full annual report of the business of the utility must be made to the commission not later than October 31 if the accounts are closed on June 30 and not later than April 30 if the accounts are closed on December 31.

(2) The reports must be in the form prescribed by the commission and must contain all the information that the commission considers necessary for the proper performance of its duties. The commission may at any time request information omitted from the reports or not provided for in the reports whenever, in the judgment of the commission, the information is necessary.

History: En. Sec. 7, Ch. 52, L. 1913; amd. Sec. 1, Ch. 186, L. 1919; re-en. Sec. 3886, R.C.M. 1921; amd. Sec. 1, Ch. 172, L. 1929; re-en. Sec. 3886, R.C.M. 1935; amd. Sec. 1, Ch. 160, L. 1945; amd. Sec. 1, Ch. 24, L. 1947; R.C.M. 1947, 70-108; amd. Sec. 1, Ch. 82, L. 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-204. Fees to be charged by commission. (1) The public service commission may, except as otherwise provided by law, require and receive fees before filing annual reports, schedules, and supplements not provided by law to be furnished free of charge.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing notice as required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; re-en. Sec. 3847.26, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5, Ch. 472, L. 1977; R.C.M. 1947, 8-126(part); amd. Sec. 6, Ch. 43, L. 1979; amd. Sec. 1, Ch. 500, L. 1979; amd. Sec. 6, Ch. 588, L. 1983.

Cross-References

Fees, 69-1-114.

69-3-205. Verification of reports and other papers. Every annual report, record, or statement required by this chapter to be made to the commission shall be sworn to by the proper officer, agent, or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record, or statement shall be deemed perjury, and the person making such false oath shall upon conviction be punished as in the case of other perjuries.

History: En. Sec. 29, Ch. 52, L. 1913; re-en. Sec. 3909, R.C.M. 1921; re-en. Sec. 3909, R.C.M. 1935; R.C.M. 1947, 70-131.

Cross-References

Perjury, 45-7-201.

69-3-206. Penalty for failure to make reports or permit examinations. (1) Any officer, agent, or person in charge of the books, accounts, records, and papers or any of them of any public utility who shall refuse or fail for a period of 30 days to furnish the commission with any report required by the provisions of this chapter and any officer, agent, or person in charge of any particular books, accounts, records, or papers relating to the business of such public utility who shall refuse to permit any commissioner or other person duly authorized by the commission to inspect such books, accounts, records, or papers on behalf of the commission shall be subject to a fine of not less than $100 or more than $1,000.

(2) Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction. Each day's refusal or failure on the part of such officer, agent, or person in charge shall be deemed a separate offense and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R.C.M. 1921; re-en. Sec. 3888, R.C.M. 1935; amd. Sec. 1, Ch. 248, L. 1969; R.C.M. 1947, 70-110(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Criminal responsibility of corporation, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Supervision of management of public utilities, 69-3-106.
Standards for and examination of products and services, 69-3-108.
Deviations from scheduled rates, tolls, and charges, 69-3-305.

69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations. (1) A person violating any safety regulation or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, that applies to areas the commission has authority to enforce is subject to a fine not to exceed $239,142 for each violation for each day. Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed $2,391,412 for any related series of violations.

(2) In determining the amount of the penalty, the following must be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and other matters as justice may require.

(3) The fine must be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

(4) The commission may prescribe rules necessary to effectively administer this section.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R.C.M. 1921; re-en. Sec. 3888, R.C.M. 1935; amd. Sec. 1, Ch. 248, L. 1969; R.C.M. 1947, 70-110(part); amd. Sec. 1, Ch. 170, L. 1985; amd. Sec. 1, Ch. 189, L. 1993; amd. Sec. 1, Ch. 124, L. 2005; amd. Sec. 1, Ch. 421, L. 2023.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Criminal responsibility of corporation, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Supervision of management of public utilities, 69-3-106.
Standards for and examination of products and services, 69-3-108.
Deviations from scheduled rates, tolls, and charges, 69-3-305.

69-3-208. Effect of failure by utility to cooperate with commission. An officer, agent, or employee of any public utility is subject to the penalty prescribed in 69-3-206 whenever the officer, agent, or employee:

(1) willfully fails or refuses to fill out and return any blanks as required by this chapter;

(2) willfully fails or refuses to answer any questions contained in blanks as provided in this chapter;

(3) knowingly or willfully gives a false answer to any questions or evades the answer to the questions, where the fact inquired of is within the officer's, agent's, or employee's knowledge; or

(4) upon proper demand, willfully fails or refuses to exhibit to any commission or any commissioners or any person also authorized to examine the same, any book, paper, or account of the public utility that is in the officer's, agent's, or employee's possession or under the officer's, agent's, or employee's control.

History: **En. Sec. 23, Ch. 52, L. 1913; re-en. Sec. 3903, R.C.M. 1921; re-en. Sec. 3903, R.C.M. 1935; R.C.M. 1947, 70-125; amd. Sec. 1989, Ch. 56, L. 2009.**

Cross-References

False swearing, 45-7-202.
Unsworn falsification to authorities, 45-7-203.

69-3-209. Violations of public utility laws or orders. If any public utility violates any provision of this chapter, does any act herein prohibited, or fails or refuses to perform any duty enjoined upon it, fails to place in operation any rate or joint rate, or fails, neglects, or refuses to obey any lawful requirement or order made by the commission or any court, then for every such violation, failure, or refusal the public utility is subject to the penalty prescribed by 69-3-206.

History: **En. Sec. 28, Ch. 52, L. 1913; re-en. Sec. 3908, R.C.M. 1921; re-en. Sec. 3908, R.C.M. 1935; R.C.M. 1947, 70-130; amd. Sec. 7, Ch. 43, L. 1979.**

69-3-210 through 69-3-220 reserved.

69-3-221. Public utility errors in billing customers. (1) For the purposes of this section:

(a) "public utility" does not include a municipal utility as defined in chapter 7 of this title;

(b) a "customer billing error":

(i) includes any bill issued by the utility that is not designated as an estimated bill and that understates the amount owed by the customer;

(ii) includes a utility's failure to bill a customer for service provided that would be billed to the customer under the utility's normal billing practices;

(iii) excludes errors that result from the theft of service by the customer;

(iv) excludes errors involving a utility's industrial class customers; and

(v) excludes errors incurred in the billing of long-distance services by a telecommunications utility.

(2) Whenever a public utility discovers a customer billing error, the utility may submit a bill to the customer for a period not to exceed the 6 months preceding the date the billing error is discovered.

(3) The commission may adopt rules to implement subsections (1) and (2).

History: **En. Secs. 1, 2, Ch. 587, L. 1985.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Utility services, Title 7, ch. 13.
Theft of services, 45-6-305.
Obtaining communication services with intent to defraud, 45-6-306.
Liability for bypassing or tampering with meter, Title 69, ch. 4, part 11.

69-3-222. Utility disclosure required — definition. (1) Except as provided in subsection (3), a utility shall provide the average annual energy use for a property.

(2) Average annual energy use must:

(a) be calculated using an average of the past 12 months of usage on a property and the rates currently in effect;

(b) include the electricity, natural gas, or both used on the property based on meters used for measuring or registering utility service; and

(c) be expressed in dollars.

(3) (a) A utility may not make public or otherwise disclose personal information protected by an individual privacy interest or information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy.

(b) A utility may provide the information required pursuant to subsection (1) only to a person or entity owning the property or representing the person or entity or to a person involved in a real estate-related transaction on the property.

(4) As used in 69-3-223 and this section, the following definitions apply:

(a) "Real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by real estate; or

(ii) the selling, leasing, brokering, or appraising of real property.

(b) "Utility" means any public utility regulated by the commission pursuant to Title 69, chapter 3, that provides electricity or natural gas for sale to customers.

History: **En. Sec. 1, Ch. 391, L. 2013.**

69-3-223. Utility — liability. A utility is liable for direct damages resulting from a discontinuance of utility service caused by breach of a continuous service agreement.

History: **En. Sec. 2, Ch. 391, L. 2013.**

69-3-224. Sale of power produced by data center. (1) If electrical power produced by a generator owned by a qualified data center is sold to a public utility or an electric cooperative, the price may not exceed the cost of production.

(2) The cost of production includes:

(a) the capital cost of constructing the generator;

(b) depreciation;

(c) wages, salaries, and employee benefits of personnel located at the generator who operate and maintain the facility;

(d) fuel;

(e) operating supplies and materials;

(f) utilities; and

(g) contracted services necessary to operate and maintain the generator.

(3) The cost of the production does not include:

(a) any cost for corporation administration;

(b) travel; or

(c) corporate legal services.

(4) The public utility or electric cooperative has the right to annually audit the operating costs of the generator at the utility's sole expense.

(5) As used in this section:

(a) "Electric cooperative" has the same meaning as "cooperative" as provided in 35-18-102.

(b) "Public utility" has the same meaning as provided in 69-3-101.

(c) "Qualified data center" has the same meaning as provided in 15-6-162.

History: **En. Sec. 1, Ch. 678, L. 2025.**

Compiler's Comments

Effective Date: Section 6, Ch. 678, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Retroactive Applicability: Section 7, Ch. 678, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2024."

69-3-225. Overbilling of regulated telecommunications tariff charges — statute of limitations for recovery. (1) A person or entity alleging overbilling of tariffed telecommunications charges by a regulated telecommunications company shall file the action before the commission or a court of competent jurisdiction within 2 years of the date of overbilling.

(2) This section is intended to be consistent with limitations on actions as provided in 47 U.S.C. 415.

(3) For purposes of this section, the following definitions apply:

(a) "Overbilling" means presenting a bill to a customer of a regulated telecommunications company that includes charges that overstate the amount owed by the customer pursuant to the tariff for the service as approved by and on file with the commission.

(b) "Regulated telecommunications company" means all public utility companies that are regulated pursuant to 69-3-101(1)(f), Title 69, chapter 3, part 8, and 69-3-803(9).

(c) "Tariffed telecommunications charges" means all charges and fees for regulated services billed by a regulated telecommunications company as authorized by a tariff that has been approved by and filed with the commission.

History: **En. Sec. 1, Ch. 490, L. 2021; amd. Sec. 3, Ch. 476, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 476, L. 2025. Amendment effective May 8, 2025.

Part 3
Ratemaking Procedures

69-3-301. Schedule of rates, tolls, and charges. (1) Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the state or for any service in connection therewith or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule all rules that in any manner affect the rates charged or to be charged for any service. When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission.

(2) A copy of so much of the schedule as the commission considers necessary for the use of the public shall be printed in plain type and kept on file in every station or office of the public utility where payments are made by the consumers or users. Such copy shall be open to the public and in such form and place as to be readily accessible to the public and conveniently inspected.

History: **En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 8, Ch. 43, L. 1979.**

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-3-302. Changes in schedules. (1) Except as provided in 69-3-308, a change may not be made in any schedule, including schedules of joint rates, except as approved by the commission or on the passage of 9 months. If the 9-month time period expires prior to commission approval of a schedule, a utility may waive the time period.

(2) Notwithstanding any provision of this title to the contrary, other than rate adjustments made pursuant to 69-3-308, the rates, tolls, or charges set forth in any schedule filed with the commission pursuant to 69-3-301 must become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever occurs first, unless the utility waives the 9-month time period. However, if the rates, tolls, or charges become effective because of the passage of 9 months, the revenue collected is subject to rebate, plus interest at an annual rate determined by the commission, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce revenue that is less than that collected under the filed schedules. In the case of an investor-owned utility, the interest rate set by the commission may not exceed the cost of equity capital as last determined by the commission.

(3) The commission may prescribe rules necessary to effectively administer this section.

History: **En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 1, Ch. 362, L. 1983; amd. Sec. 8, Ch. 254, L. 1987; amd. Sec. 2, Ch. 570, L. 2003; amd. Sec. 4, Ch. 476, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 476, L. 2025. Amendment effective May 8, 2025.

Cross-References

Investigatory powers of Consumer Counsel, 69-2-203.

69-3-303. Notice and hearing on proposed change. (1) Except as provided in 69-3-308, before the commission may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's service area or before any change may become effective due to the passage of 9 months, the commission shall publish a notice of the proposed change, conforming to the requirements of 2-4-601 in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice must announce a hearing on the proposed change and must inform interested persons as to how they may petition the commission to become parties to the hearing.

(2) The commission shall proceed to conduct the hearing under the Montana Administrative Procedure Act. The final decision of the commission in any matter decided after a hearing conducted pursuant to this section must conform to the requirements of a decision in a contested case under the Montana Administrative Procedure Act.

(3) The consumer counsel may petition to become a party to the hearing.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 3, Ch. 570, L. 2003.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.
Montana Administrative Procedure Act, Title 2, ch. 4.
Fees, 69-1-114, 69-3-204.
Investigatory powers of Consumer Counsel, 69-2-203.

69-3-304. Temporary approval of rate increases or decreases. The commission may, in its discretion, temporarily approve increases or decreases pending a hearing or final decision. If the final decision is to disapprove an increase, the commission may order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval. If the final decision is to disapprove a decrease, the commission may order a surcharge to be paid by all consumers for the amount not collected retroactive to the date of the temporary approval. The commission shall order interest to be paid on a rebate or surcharge as determined by the commission. An order of the commission approving or denying a temporary rate increase or decrease shall be based upon consistent standards appropriate for the nature of the case pending and shall be an intermediate agency action subject to judicial review under the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 7, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

69-3-305. Deviations from scheduled rates, tolls, and charges. (1) Except as provided in subsection (4)(a), a public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) (a) A provider of regulated telecommunications service may offer, for a limited period of time, rebates, price reductions, or waivers of charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing for services to end users does not require advance approval of the commission. Informational price lists must be filed with the commission on or before the date that the promotion begins.

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(c) The commission may define the appropriate scope of promotions, rebates, market trials, and grants and subsidized loans, either by rule or in response to complaints. The commission may determine whether a particular sales activity or grant or subsidized loan program under this subsection (4) is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities and grant and subsidized loan programs that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(5) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. However, this does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

History: **En. Sec. 12, Ch. 52, L. 1913; re-en. Sec. 3892, R.C.M. 1921; re-en. Sec. 3892, R.C.M. 1935; R.C.M. 1947, 70-114; amd. Sec. 1, Ch. 327, L. 1983; amd. Sec. 6, Ch. 210, L. 1991; amd. Sec. 1, Ch. 207, L. 1993; amd. Sec. 2, Ch. 535, L. 1993; amd. Sec. 29, Ch. 349, L. 1997; amd. Sec. 1, Ch. 103, L. 2007; amd. Sec. 5, Ch. 476, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 476, L. 2025. Amendment effective May 8, 2025.

Cross-References

Prohibition against laws impairing contracts, Art. II, sec. 31, Mont. Const.

69-3-306. Classification of service. (1) Except as provided in subsection (3), the commission may prescribe classifications of the service of all public utilities. Classifications may take into account the quantity used, the time when used, and any other reasonable consideration. A public utility is required to conform its schedule of rates, tolls, and charges to the classifications.

(2) The commission shall prescribe a declining block rate structure or a structure appropriate to customer-generators for electric service, when cost-justified.

(3) Classifications of service for customer-generators must be determined in accordance with Title 69, chapter 8, part 6.

History: **En. Sec. 13, Ch. 52, L. 1913; re-en. Sec. 3893, R.C.M. 1921; re-en. Sec. 3893, R.C.M. 1935; R.C.M. 1947, 70-115; amd. Sec. 1, Ch. 517, L. 1985; amd. Sec. 4, Ch. 248, L. 2017.**

Cross-References

Fees, 69-1-114, 69-3-204.

Power and energy companies, Title 69, ch. 5.

69-3-307. Treatment of advertisement costs and contributions. Costs or expenses incurred by public utilities for advertising, transfers of funds without full and adequate consideration, contributions, donations, and gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the public service commission in setting or regulating rates that may be charged by the public utilities pursuant to this chapter. This section does not apply to advertising that encourages the conservation of energy or product safety or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demand. Furthermore, for communications public utilities, the provisions of this section do not apply to advertising that relates to special equipment that is available to aid persons with disabilities or to special services that are designed to protect the public health, welfare, and safety, to promote more efficient use of a communications system, or to promote increased use of regulated communications services.

History: **En. 70-121.1 by Sec. 1, Ch. 297, L. 1975; R.C.M. 1947, 70-121.1; amd. Sec. 1, Ch. 452, L. 1989; amd. Sec. 75, Ch. 472, L. 1997.**

Cross-References

Home weatherization programs, Title 90, ch. 4, part 2.

69-3-308. Disclosure of taxes and fees paid by customers of public utility — automatic rate adjustment and tracking for taxes and fees. (1) A public utility may separately disclose in a customer's bill the amount of state and local taxes and fees assessed against the public utility that the customer is paying.

(2) (a) (i) Except as provided in 15-72-601, the commission shall allow a public utility to file rate schedules containing provisions for the automatic adjustment and tracking of Montana state and local taxes and fees, except state income tax, paid by the public utility. The resulting rate schedule changes must include:

(A) adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees;

(B) retroactive tax adjustments; and

(C) adjustments related to the resolution of property taxes paid under protest.

(ii) The rate schedules must include provisions for annual rate adjustments, including both tax increases and decreases.

(b) The amended rates must automatically go into effect on January 1 following the date of change in taxes paid on an interim basis, subject to any adjustments determined in subsection (2)(c).

(c) The amended rate schedule must be filed with the commission on or before the effective date of the change in taxes paid, and if the commission determines that the revised rate schedule is in error, the commission may, within 45 days of receipt of the revised rate schedule, ask for comment and order the public utility to address any errors or omissions including, if necessary, any refunds due customers.

(d) Failure of the commission to issue an order pursuant to subsection (2)(c) is considered approval on the part of the commission.

(e) A public utility may challenge an order issued by the commission under subsection (2)(c) in accordance with the provisions of Title 2, chapter 4, part 7.

History: En. Sec. 1, Ch. 570, L. 2003; amd. Sec. 5, Ch. 387, L. 2017; amd. Sec. 11, Ch. 14, L. 2021; amd. Sec. 1, Ch. 322, L. 2021.

69-3-309 reserved.

69-3-310. Rulemaking authority. The commission may adopt rules to implement this part.

History: En. Sec. 8, Ch. 210, L. 1991.

69-3-311 through 69-3-320 reserved.

69-3-321. Complaints against public utility — hearing. (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

(a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;

(b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, power, or regulated telecommunications service, or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory; or

(c) any service is inadequate.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practices, or acts complained of shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within 20 days unless further delayed by consent of all parties.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part); amd. Sec. 14, Ch. 546, L. 1985.

Cross-References

Witness fees and mileage, 26-2-501, 26-2-505.

69-3-322. Treatment of multiple complaints. When complaint is made of more than one rate, charge, or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of and at such times and places as it may prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-323. Complaint by public utility. Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any mercantile, agricultural, or manufacturing society; body politic or municipal organization; or person. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-3-324. Initiation of action by commission itself. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services and after a full hearing as provided in this part may make by order such changes as may be just and reasonable, the same as if a formal complaint had been made.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-325. Notice of hearing. The commission shall give the public utility and the complainant or complainants at least 10 days' notice of the time when and the place where such hearing will be held.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part).

Cross-References

Fees, 69-1-114, 69-3-204.

69-3-326. Conduct of hearing. At the hearing, both the complainant and the public utility have the right to appear by counsel or otherwise and to be fully heard. Either party is entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission are entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the fees and mileage must be paid out of the state treasury in the same manner as other claims against the state are paid. Fees or mileage may not be allowed unless the presiding officer of the commission certifies to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part); amd. Sec. 1990, Ch. 56, L. 2009.

Cross-References

Witness fees in courts of record, 26-2-501.
Expert witnesses, 26-2-505.
Records of public utilities, 69-3-202.

69-3-327. Subpoena of witnesses. If any party ordered to appear before the commission as a witness fails to obey the order, the commission or its staff may apply to the clerk of the nearest district court for a subpoena commanding the attendance of the witness before the commission. It is the duty of the clerk to issue the subpoena and of any peace officer to serve the subpoena. Disobedience to the subpoena is considered contempt of court and is punishable accordingly.

History: En. Sec. 18, Ch. 52, L. 1913; re-en. Sec. 3898, R.C.M. 1921; re-en. Sec. 3898, R.C.M. 1935; R.C.M. 1947, 70-120; amd. Sec. 4, Ch. 35, L. 2009.

Cross-References

Refusal to obey subpoena or testify, 3-1-501; 26-2-104; 45-7-309.
Subpoenas, Title 26, ch. 2, part 1.

69-3-328. Depositions of witnesses. The commission or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

History: En. Sec. 20, Ch. 52, L. 1913; re-en. Sec. 3900, R.C.M. 1921; re-en. Sec. 3900, R.C.M. 1935; R.C.M. 1947, 70-122.

69-3-329. Immunity for witnesses. (1) A person may not be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this chapter on the ground of or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to penalty or forfeiture. Except as provided in subsection (2), a person having testified may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person may have testified or produced any documentary evidence.

(2) A person testifying is not exempt from prosecution or punishment for perjury.

History: En. Sec. 22, Ch. 52, L. 1913; re-en. Sec. 3902, R.C.M. 1921; re-en. Sec. 3902, R.C.M. 1935; R.C.M. 1947, 70-124; amd. Sec. 1991, Ch. 56, L. 2009.

Cross-References

Right against self-incrimination, Art. II, sec. 25, Mont. Const.
Perjury, 45-7-201.
Self-incrimination and immunity, 46-4-305.

69-3-330. Decision by commission. (1) If, upon a hearing and due investigation, the rates, tolls, charges, schedules, or joint rates are found to be unjust, unreasonable, or unjustly discriminatory or to be preferential or otherwise in violation of the provisions of this chapter, the commission may fix and order substituted the rates, tolls, charges, or schedules as are just and reasonable.

(2) If the commission determines that a rate, toll, or charge has been collected in violation of 69-3-305(1)(b), the commission may order refunds or credits as specified in 69-3-305(3).

(3) If the commission finds that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this chapter or that the service is inadequate or any reasonable service cannot be obtained, the commission may substitute other regulations, measurements, practices, services, or acts and make an order relating to it as is just and reasonable.

(4) In any decision ordering a change in the rates that may be charged for electricity or natural gas, the commission shall list each expenditure submitted by the utility for allowance as an operating cost that is disallowed by the commission as an element of operating costs. The list of disallowed expenditures must appear in the written decision of the commission and must itemize each expenditure by amount, category, and purpose.

(5) A party in interest who is aggrieved by a commission-contested case decision may petition for judicial review pursuant to the Montana Administrative Procedure Act in accordance with Title 2, chapter 4, part 7.

History: (1), (2)En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; Sec. 70-121, R.C.M. 1947; (3)En. 70-136 by Sec. 1, Ch. 290, L. 1975; Sec. 70-136, R.C.M. 1947; R.C.M. 1947, 70-121(part), 70-136; amd. Sec. 2, Ch. 327, L. 1983; amd. Sec. 2, Ch. 322, L. 2021.

69-3-331. Cost tracking and recovery. (1) If the commission approves a cost-tracking adjustment for electricity supply costs for a public utility regulated in accordance with chapter 8 or under this chapter, the cost-tracking adjustment must provide for:

(a) 90% customer and 10% shareholder sharing of costs, if cost sharing is required; and

(b) full recovery of costs incurred by a public utility as a result of qualifying small power production facility purchase requirements established in Title 69, chapter 3, part 6.

(2) A cost-tracking adjustment may not include a deadband.

(3) For the purposes of this section, "deadband" means a level of cost recovery variance, including levels of underrecoveries and overrecoveries to be borne by the public utility.

History: En. Sec. 1, Ch. 316, L. 2019; amd. Sec. 1, Ch. 54, L. 2021.

69-3-332. Digital asset mining ratemaking. (1) The commission may not establish a rate classification for digital asset mining, digital asset mining businesses, or home digital asset mining that creates unduly discriminatory rates.

(2) For the purposes of this section, the following definitions apply:

(a) "Data center" means a use involving a building or premises in which the majority of the use is occupied by computers, telecommunications, or related equipment, including supporting equipment, where information is processed, transferred, and stored.

(b) "Digital asset mining" means the use of electricity to power a computer for the purpose of securing a blockchain network.

(c) "Digital asset mining business" means a group of computers working at a single site that consume more than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

(d) "Discriminatory rates" means electricity rates substantially different from other industrial similar uses of electricity in similar geographic areas after accounting for the cost of service.

(e) "Home digital asset mining" means mining digital assets in areas zoned for residential use that consume less than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

History: En. Sec. 1, Ch. 344, L. 2023.

Cross-References

Digital assets taxation, 15-1-150.
Right to mine digital assets, 76-2-1003.

Part 4
Review of Commission Actions
(Repealed)

69-3-401. Repealed. Sec. 3, Ch. 322, L. 2021.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part).

69-3-402. Repealed. Sec. 3, Ch. 322, L. 2021.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part); amd. Sec. 1, Ch. 366, L. 1979.

69-3-403. Repealed. Sec. 3, Ch. 322, L. 2021.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part).

69-3-404. Repealed. Sec. 3, Ch. 322, L. 2021.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(3), (4); amd. Sec. 2, Ch. 366, L. 1979; amd. Sec. 1, Ch. 187, L. 1983.

69-3-405. Repealed. Sec. 3, Ch. 322, L. 2021.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(5).

Part 5
Issuance of Securities and Creation of Liens

Part Cross-References

Uniform Commercial Code — investment securities, Title 30, ch. 8.

69-3-501. Regulation of issuance of securities and creation of liens by utilities. (1) Whenever a public utility furnishing electric or gas service in the state has revenue derived from sources in Montana which exceeds $5 million or 5% of its gross revenue, the utility's right to issue, assume, or guarantee securities and to create liens on its property in the state is subject to the regulation and supervision of the commission, as set forth in this part.

(2) The public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume, or guarantee other securities payable at periods of more than 12 months thereafter for the following purposes:

(a) the acquisition of property;
(b) the construction, completion, extension, or improvement of its facilities;
(c) the improvement or maintenance of its service;
(d) the discharge or lawful refunding of its obligations;
(e) the reimbursement of money actually expended for said purposes from income or from other money; or
(f) any other purpose approved by the commission.

History: En. Sec. 1, Ch. 74, L. 1961; R.C.M. 1947, 70-117.1; amd. Sec. 1, Ch. 354, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

69-3-502. Petition for issuance of securities. Such public utility shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption, or guarantee of securities and the application of the proceeds therefrom for the purposes specified.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-503. Prompt consideration of petition. All applications to the commission hereunder shall be disposed of promptly and in any event within 30 days after petition is filed with the commission unless, for good cause, it is necessary to continue consideration thereof for a longer period. Whenever such application is continued beyond said 30-day period, the commission shall enter its order effecting such continuance and stating fully therein the facts requiring continuance for a designated period of time.

History: En. Sec. 4, Ch. 74, L. 1961; R.C.M. 1947, 70-117.4.

69-3-504. Decision on petition. After such hearing and upon such notice as the commission may prescribe, the commission shall enter its written order approving the petition and authorizing the proposed securities transactions unless the commission shall find that:

(1) such transactions are inconsistent with the public interest;

(2) the purpose or purposes thereof are not permitted by this part; or

(3) the aggregate amount of the securities outstanding and proposed to be outstanding would exceed the fair value of the properties and business of the public utility.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-505. Issuance of certain short-term obligations. Such public utility may issue notes or drafts maturing not more than 1 year after the date of such issue, renewal, or assumption of liability and aggregating, together with all other then outstanding notes and drafts of a maturity of 1 year or less on which such public utility is primarily or secondarily liable, not more than 5% of the par value of the other securities of the public utility then outstanding, without application to or order of the commission. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issuance of such notes or drafts.

History: En. Sec. 3, Ch. 74, L. 1961; R.C.M. 1947, 70-117.3.

69-3-506. Unapproved securities void. Except as provided in 69-3-505, all securities issued, assumed, or guaranteed after July 1, 1961, without approval by the commission as provided herein shall be void.

History: En. Sec. 5, Ch. 74, L. 1961; R.C.M. 1947, 70-117.5.

69-3-507. State not obligated on securities. No provision of this part or any act or deed done or performed in connection therewith shall be construed to obligate the state to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed under the provisions of this part.

History: En. Sec. 6, Ch. 74, L. 1961; R.C.M. 1947, 70-117.6.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

State Finance, Title 17.

Part 6
Small Power Production Facilities

Part Compiler's Comments

Repealer — Contingent Effective Date: Section 3, Ch. 284, L. 2003, provided that the repeal of this part is effective on the effective date of the repeal of 16 U.S.C. 824a-3.

69-3-601. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

(2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(3) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources; or

(b) produces electricity and useful forms of thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes through the sequential use of energy known as cogeneration; and

(c) has a power production capacity that together with any other facilities located at the same site is not greater than 80 megawatts; and

(d) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility.

(4) "Utility" means any public utility supplying electricity and regulated by the commission. *(Repealed on occurrence of contingency—secs. 1, 3, Ch. 284, L. 2003—see part compiler's comment.)*

History: En. Sec. 1, Ch. 436, L. 1981; amd. Sec. 1, Ch. 232, L. 1983.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-602. *(Temporary)* **Generation and sale of electricity by qualifying small power production facility.** (1) A qualifying small power production facility may generate electricity from the sources described in 69-3-601(3)(a) and (3)(b) and may contract for the sale of that electricity with a utility.

(2) A qualifying small power production facility may generate electricity from the sources described in 69-3-601(3)(a) and (3)(b) and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rates and regulations established by the Public Utility Regulatory Policies Act. *(Repealed on occurrence of contingency—secs. 1, 3, Ch. 284, L. 2003—see part compiler's comment.)*

History: En. Sec. 2, Ch. 436, L. 1981; amd. Sec. 2, Ch. 232, L. 1983.

69-3-603. *(Temporary)* **Required sale of electricity under rates and conditions prescribed by commission.** (1) Except as provided in subsection (3), if a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) (a) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 180 days of receipt of the petition or, in accordance with subsection (2)(b), before the completion of the rate proceeding. The rates and conditions of the determination must be made according to the standards prescribed in 69-3-604.

(b) When a utility files a request to establish or revise rate schedules for qualifying small power production facilities pursuant to rules adopted by the commission, the commission shall issue an order within 270 days of receipt of the request.

(3) (a) If a qualifying small power production facility is eligible to sell electricity to a utility pursuant to a rate schedule approved by the commission, neither the qualifying small power production facility nor the utility may petition the commission in accordance with subsection (2)(a) to authorize a rate or term different from that in the rate schedule.

(b) A qualifying small power production facility may file a complaint pursuant to 69-3-321 if the facility feels the rate schedule approved by the commission is unreasonable. *(Repealed on occurrence of contingency—secs. 1, 3, Ch. 284, L. 2003—see part compiler's comment.)*

History: En. Sec. 3, Ch. 436, L. 1981; amd. Sec. 1, Ch. 69, L. 2011; amd. Sec. 1, Ch. 234, L. 2015.

69-3-604. *(Temporary)* **Standards for determination of rates and conditions.** (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through (6).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility must be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility must be established with consideration of the availability and reliability of the electricity produced.

(4) The commission shall set these rates using the avoided cost over the term of the contract.

(5) Avoided cost rates may not include a bonus or adder to provide additional compensation for environmental externalities or other costs above avoided costs, except when a bonus or adder is necessary to compensate for a real and actual cost required by existing regulation or existing law.

(6) The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards. *(Repealed on occurrence of contingency—secs. 1, 3, Ch. 284, L. 2003—see part compiler's comment.)*

History: En. Sec. 4, Ch. 436, L. 1981; amd. Sec. 3, Ch. 232, L. 1983; amd. Sec. 1, Ch. 60, L. 2011; amd. Sec. 1, Ch. 300, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 7
Conservation Purchases or Investments by Utilities

69-3-701. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission created in 2-15-2602.

(2) "Conservation" means any reduction in electric power or natural gas consumption as a result of investment in measures that increase the efficiency of electricity or gas use in building shells, space heating or cooling equipment, water heating equipment, or refrigeration equipment or other cost-effective measures which, over its economic life meet the criteria of 69-3-702.

History: En. Sec. 1, Ch. 610, L. 1983; amd. Sec. 1, Ch. 304, L. 1987; amd. Sec. 7, Ch. 157, L. 1993.

69-3-702. Eligible conservation. Conservation purchases or investments are eligible under this part if they are provided for in 69-3-1206 and in accordance with 69-3-714 or 69-3-1209.

History: En. Sec. 3, Ch. 610, L. 1983; amd. Sec. 2, Ch. 304, L. 1987; amd. Sec. 8, Ch. 157, L. 1993; amd. Sec. 6, Ch. 449, L. 2019; amd. Sec. 2, Ch. 535, L. 2023.

69-3-703. Utility investment in or purchase of conservation — approval by commission. (1) A utility may:

(a) purchase conservation from a person or private firm; or

(b) directly engage in conservation investments.

(2) The conservation purchases or investments provided for in subsection (1) are subject to approval by the commission.

(3) Cost-effective conservation measures approved by the commission may, at the customer's discretion, be installed by:

(a) a person or a private firm;

(b) the customer; or

(c) the utility.

History: En. Sec. 2, Ch. 610, L. 1983; amd. Sec. 1992, Ch. 56, L. 2009.

Cross-References

Home weatherization programs, Title 90, ch. 4, part 2.

69-3-704 through 69-3-710 reserved.

69-3-711. Criteria for allowable conservation and demand-side management programs — onsite audits. (1) The commission shall approve cost-effectiveness criteria for conservation that may be placed into a utility's rate base under this part and demand-side management programs in accordance with 69-3-1201 through 69-3-1209.

(2) The commission may conduct onsite energy audits to ensure compliance with the criteria established under subsection (1).

History: En. Sec. 5, Ch. 610, L. 1983; amd. Sec. 7, Ch. 449, L. 2019.

69-3-712. Commission to include conservation and demand-side management programs in rate base — rate of return. (1) In order to encourage the purchase of or investment in conservation by a utility, the commission may include conservation purchases or investments and demand-side management programs eligible under 69-3-702 and in compliance with criteria adopted under 69-3-711 and 69-3-1201 through 69-3-1209 in a utility's rate base.

(2) In establishing the rate of return, the commission may allow an increment of up to 2% added to the rate of return on common equity permitted on the utility's other investments.

(3) The commission shall allow the rate of return increment provided for in subsection (2) for a period not to exceed 30 years after the conservation is first placed in the rate base.

(4) The commission shall prescribe amortization periods for conservation that is included in a utility's rate base.

History: En. Sec. 4, Ch. 610, L. 1983; amd. Sec. 8, Ch. 449, L. 2019.

69-3-713. Repealed. Sec. 3, Ch. 11, L. 2021.

History: En. Sec. 6, Ch. 610, L. 1983; amd. Sec. 9, Ch. 449, L. 2019.

69-3-714. Criteria for allowable advanced conductor programs. (1) The commission may approve cost-effectiveness criteria for advanced conductor projects that may be placed into a utility's rate base under this part.

(2) Criteria must be based on established direct current resistance at standard pressure and a temperature of 20 degrees Celsius.

(3) As used in this section, "advanced conductor" means an overhead electricity conductor installed in a transmission or distribution project that has a direct current electrical resistance at least 10% lower than existing conductors of a similar diameter on the system.

(4) In establishing cost-effectiveness criteria, the commission may consider decreased electrical losses and any other relevant consumer, environmental, and system benefits provided by advanced conductors.

History: En. Sec. 1, Ch. 535, L. 2023.

Part 8
Montana Telecommunications Act

Part Cross-References

9-1-1 emergency telephone system, Title 10, ch. 4.

69-3-801. Short title. This part may be cited as the "Montana Telecommunications Act".

History: En. Sec. 1, Ch. 546, L. 1985.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services.

History: En. Sec. 2, Ch. 546, L. 1985; amd. Sec. 1, Ch. 210, L. 1991.

69-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Commercial mobile radio service" means commercial mobile radio service as defined in 47 CFR 20.9.

(2) "Commission" means the public service commission.

(3) "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under 69-3-840.

(4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a) on February 8, 1996, provided telephone exchange service in the area; and

(b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.

(5) "Local telecommunications" means:

(a) telecommunications originating in a wireline local calling area, including extended area service areas, and terminating in the same wireline local calling area or extended area service area; or

(b) commercial mobile radio service that originates from or terminates to a commercial mobile radio service provider within the same major trading area as defined in 47 CFR 24.202(a).

(6) "Nonlocal telecommunications" means:

(a) wireline telecommunications traffic carried by either an interlocal access transport area carrier or an intralocal access transport area toll provider that originates in one wireline local calling area and terminates in another wireline local calling area; or

(b) commercial mobile radio service that originates in a major trading area and terminates in a different major trading area as defined in 47 CFR 24.202(a).

(7) "Originating carrier" means a telecommunications carrier from whose network a customer originates telecommunications traffic.

(8) "Private telecommunications service" means a system, including the construction, maintenance, or operation of the system, for the provision of telecommunications service or any portion of the service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

(9) (a) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

(b) Except as provided in 69-3-815, the term does not include the provision of terminal equipment used to originate or terminate the regulated service, private telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

(10) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana and are billed for a service address in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

(11) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

(12) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

(13) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

(14) "Terminating carrier" means a telecommunications carrier upon whose network telecommunications traffic terminates.

(15) (a) "Transit traffic" means telecommunications traffic that an originating carrier delivers to a transiting carrier or carriers for delivery to a terminating carrier.

(b) The term does not mean traffic carried by interlocal access transport area carriers or providers of intralocal access transport area toll services.

(16) "Transiting carrier" means a telecommunications carrier or carriers that transport transit traffic from an originating carrier to a terminating carrier and that do not originate or terminate telecommunications traffic.

History: **En. Sec. 3, Ch. 546, L. 1985; amd. Sec. 30, Ch. 349, L. 1997; amd. Sec. 1, Ch. 423, L. 2003; amd. Sec. 6, Ch. 476, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 476, L. 2025. Amendment effective May 8, 2025.

Cross-References

Public Service Commission, 2-15-2602.

69-3-804. Exemption for private telecommunications service. Construction, maintenance, or operation of a private telecommunications service does not constitute the provision of regulated telecommunications service, and a private telecommunications service is not subject to any of the provisions of this title. If any other person or entity, including the owners or shareholders of the entity owning or operating a private telecommunications service, uses the telecommunications service, whether for hire or not, the private telecommunications service is a regulated telecommunications service under this part. An occasional or accommodative use of a private telecommunication system by a third person is not a violation of this section.

History: **En. Sec. 4, Ch. 546, L. 1985.**

69-3-805. Registration of telecommunications providers — rulemaking. (1) Before any person or entity provides telecommunications [services] within the state of Montana, it shall file a notice with the commission.

(2) The provider shall file with the commission a report of any judgment, penalty, or sanction entered in any other jurisdiction that could adversely affect the provider's ability to provide communications services in Montana.

(3) The commission shall adopt rules to implement this section.

History: **En. Sec. 5, Ch. 546, L. 1985; amd. Sec. 31, Ch. 349, L. 1997; amd. Sec. 1, Ch. 61, L. 2025.**

Compiler's Comments

2025 Amendment — Coordination — Code Commissioner Correction: See 2025 Session Law for amendment made by sec. 1, Ch. 61, L. 2025. Amendment effective April 3, 2025.

The amendment to this section made by sec. 7, Ch. 476, L. 2025, was rendered void by sec. 11, Ch. 476, L. 2025, a coordination section.

In (1) the Code Commissioner substituted "services" for "service" for consistency with related amendments.

69-3-806. Repealed. Sec. 9, Ch. 476, L. 2025.

History: **En. Sec. 6, Ch. 546, L. 1985; amd. Sec. 32, Ch. 349, L. 1997.**

69-3-807. Repealed. Sec. 9, Ch. 476, L. 2025.

History: **En. Sec. 7, Ch. 546, L. 1985; amd. Sec. 3, Ch. 210, L. 1991; amd. Sec. 33, Ch. 349, L. 1997.**

69-3-808. Repealed. Sec. 9, Ch. 476, L. 2025.

History: **En. Sec. 8, Ch. 546, L. 1985; amd. Sec. 4, Ch. 210, L. 1991.**

69-3-809. Repealed. Sec. 9, Ch. 476, L. 2025.

History: **En. Sec. 2, Ch. 210, L. 1991; amd. Sec. 1, Ch. 263, L. 2011.**

69-3-810. Repealed. Sec. 9, Ch. 476, L. 2025.

History: **En. Sec. 5, Ch. 210, L. 1991.**

69-3-811. Costs for services provided — jurisdiction over complaints. (1) Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.

(2) With regard to competitive services, the term "relevant costs" includes the price for any components that are used by the telecommunications provider and that would be essential for alternative providers to use in providing the competitive services pursuant to commission-approved methodology.

(3) The commission has jurisdiction to consider complaints and initiate investigations to determine whether the price charged by a provider of regulated telecommunications service is above relevant costs. The commission may also consider complaints that a pricing or promotional practice violates any provision of this title.

History: En. Sec. 7, Ch. 210, L. 1991.

69-3-812 through 69-3-814 reserved.

69-3-815. Nondiscriminatory intercarrier compensation — billing records — enforcement — rulemaking. (1) An originating carrier of local telecommunications service shall transmit with the originating carrier's telecommunications traffic information necessary to enable the terminating carrier to identify, measure, and appropriately charge the originating carrier for the termination of the local telecommunications service.

(2) A provider of intralocal access transport area toll services or any other carrier that provides nonlocal telecommunications services in Montana shall transmit with its telecommunications traffic information necessary to enable the terminating carrier to identify, measure, and appropriately charge for the termination of the telecommunications traffic.

(3) A transiting carrier shall deliver telecommunications traffic to terminating carriers by means of facilities that enable the terminating carrier to receive from the originating carrier any and all information that the originating carrier transmits with its telecommunications traffic that enables the terminating carrier to identify, measure, and appropriately charge the originating carrier or the interlocal access transport area carrier or intralocal access transport area toll provider of nonlocal telecommunications traffic for the termination of its telecommunications traffic.

(4) A transiting carrier is required to provide billing records for its transit traffic to the terminating carrier upon request. The transiting carrier shall provide billing records pursuant to existing policies and agreements until the commission adopts rules pursuant to subsection (7).

(5) A local exchange carrier or commercial mobile radio services provider that delivers local telecommunications traffic to a terminating carrier, directly or indirectly through a transiting carrier, shall, upon request of the terminating carrier, negotiate an interconnection agreement with the terminating carrier, as provided in 69-3-831 through 69-3-839. The interconnection agreement must include rates, terms, and conditions for reciprocal compensation for the transport and termination of local telecommunications traffic.

(6) A telecommunications carrier registered to provide telecommunications services in Montana pursuant to 69-3-805 may file a complaint with the commission requesting enforcement of this section, including enforcement of an agreement approved by the commission under 69-3-839. Upon the filing of a complaint, the commission may authorize the terminating carrier to refuse to terminate traffic from the originating carrier or the commission may authorize interim payments. The commission may order compensation to the terminating carrier and may order other appropriate relief.

(7) The commission shall adopt rules for the implementation of this section. The rules must provide for the expedited resolution of complaints filed pertaining to the provisions of this section. The rules must identify what type of transit records are available and what the cost of the transit records should be and must determine which party is responsible for the payment of detailed call records to the transiting carrier.

History: En. Sec. 2, Ch. 423, L. 2003.

69-3-816 through 69-3-820 reserved.

69-3-821. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 9, Ch. 546, L. 1985.

69-3-822. Rulemaking authority. The commission may adopt rules to implement this part.

History: En. Sec. 10, Ch. 546, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-823. Exception. Nothing in this part affects the exemption from regulation provided by 35-18-104.

History: En. Sec. 13, Ch. 546, L. 1985.

69-3-824. No preemption of laws governing anticompetitive activity. Nothing in this part in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity.

History: En. Sec. 15, Ch. 546, L. 1985.

Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

Unfair trade practices generally, Title 30, ch. 14, part 2.

69-3-825 through 69-3-828 reserved.

69-3-829. Expedited complaint proceeding — commission authority. (1) The commission may conduct expedited complaint proceedings involving interconnection arrangements that include but are not limited to exchange access services between telecommunications carriers.

(2) The provisions of the Montana Administrative Procedure Act do not apply to petitions for an expedited complaint proceeding under 69-3-830 and this section.

History: En. Sec. 2, Ch. 310, L. 2003.

69-3-830. Expedited complaint proceeding — procedure. (1) (a) A party that petitions the commission for an expedited complaint proceeding shall file with the commission, at the same time as it submits the petition, the following:

(i) a statement that the petitioner has attempted in good faith to resolve the petitioner's disagreement with the respondent prior to petitioning the commission to initiate an expedited complaint proceeding;

(ii) a description of facts, including relevant documentation, of the issues in dispute and the position of each of the parties with respect to those issues; and

(iii) a statement that the petitioner has informed the respondent of the petitioner's intent to file a petition for expedited complaint proceeding at least 10 days prior to filing the petition with the commission.

(b) The petitioner shall provide a copy of the petition and any associated documentation to the other party or parties not later than the day on which the commission receives the petition.

(c) The commission shall limit its consideration during an expedited complaint proceeding to those issues set forth by the parties in the petition and the response to the petition.

(2) A nonpetitioning party may respond to the other party's petition and provide any additional information within 25 days after the commission receives the petition.

(3) (a) The commission may appoint a hearings examiner, who shall file with the commission a proposed decision within the time set by order of the commission.

(b) (i) On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall include the affidavit or motion as a part of the record in the case.

(ii) The affidavit for disqualification must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not more than 10 days after the date of the appointment of the hearings examiner.

(iii) The commission may disqualify the hearings examiner and appoint another hearings examiner.

(4) Participation in the expedited complaint proceeding must be limited to the petitioning party, named respondents, and the Montana consumer counsel.

(5) Unless otherwise agreed to by the parties, the commission or the hearings examiner shall, within 10 days of the filing of the petition, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the petition. The schedule must include discovery deadlines and a hearing date.

(6) (a) The hearing must be conducted pursuant to the Montana Rules of Evidence and the parties:

(i) are entitled to be heard;

(ii) may present evidence material to the issues; and

(iii) may cross-examine witnesses appearing at the hearing.

(b) Parties must be allowed to conduct discovery pursuant to the schedule determined by the hearings examiner or the commission, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(7) The commission or the hearings examiner may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being heard and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission or the hearings examiner shall regulate the course of the hearing and the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues.

(8) The commission shall issue a final order on the petition not later than 120 days from the date that the petition for expedited complaint proceeding was filed with the commission.

(9) If the hearings examiner becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(10) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an expedited complaint proceeding, after issuance of notice of hearing, may not communicate with any party or party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

(11) As part of its final order, the commission may order relief that is justified under the circumstances. The commission may order the payment of monetary damages, by one party or parties to another party or parties, not to exceed $10,000.

History: **En. Sec. 3, Ch. 310, L. 2003.**

69-3-831. Interconnection — construction and effect. Sections 69-3-832 through 69-3-849 and this section do not grant any jurisdiction to the commission over telecommunications carriers except as expressly set forth in 69-3-832 through 69-3-849 and this section, and 69-3-832 through 69-3-849 and this section may not be construed to limit or repeal exemptions from the commission's jurisdiction otherwise recognized by statute or law. Legislation may not be considered to supersede or modify any provision of 69-3-832 through 69-3-849 and this section except to the extent that the legislation does so expressly.

History: **En. Sec. 1, Ch. 349, L. 1997.**

69-3-832. Interconnection — jurisdiction. In addition to the authority granted to the commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the purposes of implementing 69-3-829 through 69-3-839, over all telecommunications carriers.

History: **En. Sec. 2, Ch. 349, L. 1997; amd. Sec. 1, Ch. 310, L. 2003.**

69-3-833. Rulemaking authority. The commission may adopt rules of procedure to implement 69-3-836 through 69-3-840.

History: **En. Sec. 3, Ch. 349, L. 1997.**

69-3-834. Duty to interconnect. (1) The purpose of this section is to implement specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

(2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

(b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

(c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(c).

(3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection (2)(c) do not apply to a rural telephone company until:

(i) the company has received a bona fide request for interconnection, services, or network elements; and

(ii) the commission determines under subsection (3)(b) that the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)).

(b) The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the commission. The commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a). Within 120 days after the commission receives notice of the request, the commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with the federal communications commission's regulations.

(4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a cable operator providing video programming and seeking to provide any telecommunications service in the area in which the rural telephone company was providing video programming on February 8, 1996.

(5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the aggregate nationwide, may petition the commission for a suspension or modification of the application of a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition. The commission shall grant the petition for the suspension or modification to the extent and for the duration that the commission determines:

(i) is necessary:

(A) to avoid a significant adverse economic impact on users of telecommunications services generally;

(B) to avoid imposing a requirement that is unduly economically burdensome; or

(C) to avoid imposing a requirement that is technically infeasible; and

(ii) is consistent with the public interest, convenience, and necessity.

(b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days after receiving the petition. Pending action, the commission may suspend enforcement of the requirement to which the petition applies with respect to the petitioning carrier.

History: En. Sec. 4, Ch. 349, L. 1997.

69-3-835. Voluntary negotiation of interconnection agreements. Upon receiving a request for interconnection, services, or network elements pursuant to 69-3-834, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier without regard to the duties set forth in 69-3-834(2)(b) or (2)(c). The agreement must include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement.

History: En. Sec. 5, Ch. 349, L. 1997.

69-3-836. Mediation of interconnection agreements. Upon the written request of any party negotiating an agreement for interconnection with another telecommunications carrier, the commission may designate a mediator, who may be a commission member, to mediate any differences arising in the course of the negotiation.

History: En. Sec. 6, Ch. 349, L. 1997.

69-3-837. Arbitration of interconnection issues. (1) The commission has the authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except as expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not apply to arbitrations conducted under the authority granted by this section.

(2) During the period from the 135th to the 160th day, inclusive, after the date on which an incumbent local exchange carrier receives a request for negotiation under 69-3-834, the carrier or any other party to the negotiation may petition the commission to arbitrate any open issues. A party that petitions the commission under this section shall, at the same time as it submits the petition, provide the commission all relevant documentation concerning the following:

(a) the unresolved issues;

(b) the position of each of the parties with respect to those issues; and

(c) any other issue discussed and resolved by the parties.

(3) A party petitioning the commission under this section shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the commission receives the petition.

(4) A nonpetitioning party to a negotiation under 69-3-834 may respond to the other party's petition and provide any additional information that it wishes within 25 days after the commission receives the petition.

(5) The commission shall limit its consideration to those issues set forth by the parties to the negotiation in the petition for arbitration and the response to the petition.

(6) The commission may appoint a hearings examiner for arbitration proceedings under this section. The hearings examiner shall file with the commission a proposed decision within the time set by order of the commission. A hearings examiner must be assigned with regard to the expertise required for the particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the record in the case. The commission may disqualify the hearings examiner and appoint another hearings examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

(7) Participation in the arbitration proceeding must be limited to the telecommunications carrier requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and the Montana consumer counsel.

(8) Negotiations among the telecommunications carriers may continue, pending a final decision by the arbitrator.

(9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and a hearing date.

(10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties are entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(11) The commission may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being arbitrated and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the hearings and the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

(12) The commission shall issue its final decision no later than 9 months after the request for negotiations on a petition issued under 69-3-834. When the commission files its final decision or when the hearings examiner files the proposed decision with the commission, each party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

(a) ensure the resolution of issues presented by the parties and ensure that the resolution meets the requirements of 69-3-834 and this section;

(b) establish rates for interconnection, services, or access to unbundled network elements pursuant to 47 U.S.C. 252(d); and

(c) provide a schedule for implementation of the terms and conditions of the decision by the parties.

(13) If the person who conducted the hearing becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(14) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

History: En. Sec. 7, Ch. 349, L. 1997.

69-3-838. Approval of arbitration decision. (1) If the commission has not approved or rejected in its entirety an agreement adopted by arbitration under 69-3-837(12) within 30 days of submission by the parties, the agreement is considered approved.

(2) The commission may reject the agreement only if the commission finds that the agreement does not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of an agreement, the commission shall provide the parties with written findings as to any deficiencies.

History: En. Sec. 8, Ch. 349, L. 1997.

69-3-839. Approval of interconnection agreements. (1) Within 90 days of filing of an interconnection agreement adopted by negotiation of the parties to an agreement, the commission shall approve or reject the agreement, or the agreement is considered approved.

(2) The commission may reject an agreement filed under this section only if the commission finds that:

(a) the agreement or a portion of the agreement discriminates against a telecommunications carrier not a party to the agreement; or

(b) the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity.

(3) Upon rejecting an agreement filed under this section, the commission shall issue written findings detailing any deficiencies in the agreement.

History: En. Sec. 9, Ch. 349, L. 1997.

69-3-840. Determination of eligible carrier status — universal service support. (1) The commission is authorized to designate telecommunications carriers as eligible for federal universal service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, and for any Montana universal service funds. This authorization applies to all telecommunications carriers notwithstanding the carrier's exemption from further regulation by the commission.

(2) Upon the petition of a telecommunications carrier or upon its own motion, the commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a service area designated by the commission. In the case of an area served by a rural telephone company, the term "service area" means the company's "study area" for federal universal service support unless the federal communications commission and the commission, after taking into account recommendations of a federal-state joint board instituted under 47 U.S.C. 410(c), establish a different definition of service area for the company. The term "service area" for all other telecommunications carriers means a geographic area, such as a census block or grid block, as established by the commission for the purpose of determining federal universal service obligations and support mechanisms.

(3) Upon receiving a petition from a telecommunications carrier and consistent with the public interest, convenience, and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(4) If no telecommunications carrier will provide the services that are supported by universal service support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests service, the commission shall determine which telecommunications carrier is best able to provide the service to the requesting unserved community. Any telecommunications carrier ordered to provide service under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible telecommunications carrier for that community or the unserved portion of the community.

(5) The commission shall permit an eligible telecommunications carrier to relinquish its designation as an eligible telecommunications carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the commission approves relinquishment under this section, within which the purchase or construction must be completed.

History: En. Sec. 10, Ch. 349, L. 1997; amd. Sec. 1, Ch. 187, L. 2003.

69-3-841. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 11, Ch. 349, L. 1997.

69-3-842. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 12, Ch. 349, L. 1997; amd. Sec. 1, Ch. 430, L. 2001.

69-3-843. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 13, Ch. 349, L. 1997; amd. Sec. 1, Ch. 187, L. 1999; amd. Sec. 2, Ch. 430, L. 2001.

69-3-844. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 14, Ch. 349, L. 1997; amd. Sec. 2, Ch. 187, L. 1999; amd. Sec. 3, Ch. 430, L. 2001.

69-3-845. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 15, Ch. 349, L. 1997; amd. Sec. 3, Ch. 187, L. 1999; amd. Sec. 4, Ch. 430, L. 2001.

69-3-846. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 16, Ch. 349, L. 1997.

69-3-847. Wholesale pricing standards. (1) Except as provided in subsection (2), if the commission is requested by a telecommunications carrier to establish wholesale prices for services provided by a telecommunications carrier, the commission may not establish a wholesale price using a default proxy discount value to be applied to the applicable retail price. The commission shall establish wholesale prices using company-specific costs.

(2) This section does not apply to the prices, terms, and conditions of a final or interim arbitrated interconnection agreement, arbitration decision, or appeal from an agreement or decision if the request for arbitration was filed on or before March 1, 1997.

History: En. Sec. 17, Ch. 349, L. 1997.

69-3-848. Pricing of individual network elements. (1) Except as provided in subsection (4), if the commission is requested by a telecommunications carrier to establish the prices of the individual network elements used to provide telecommunications services, the commission shall set those prices at a just and reasonable level sufficient to recover the actual cost of providing those elements, including:

(a) a reasonable share of the joint and common costs so that the telecommunications carrier has a reasonable opportunity to recover these costs;

(b) depreciation costs that are based upon forward-looking asset lives consistent with asset lives of other telecommunications carriers and that reflect an amortization of any underdepreciated investment;

(c) a reasonable share of the costs associated with fill factors, recognizing spare capacity required to fulfill eligible telecommunications carrier responsibilities; and

(d) a fair return on investments.

(2) The actual cost of providing the elements included in subsections (1)(a) through (1)(d) must be determined without reference to a rate-of-return or other rate-based proceeding.

(3) If a telecommunications carrier uses average prices for services to end users without regard to the customer's location, the commission shall similarly establish an average cost and wholesale price for each individual network element sold to other telecommunications carriers.

The commission may depart from average pricing for network elements only to the extent that the retail prices to end users of a telecommunications carrier have departed from average pricing.

(4) This section does not apply to the prices, terms, and conditions of a final or interim arbitrated interconnection agreement, arbitration decision, or appeal from an agreement or decision if the request for arbitration was filed on or before March 1, 1997.

History: En. Sec. 18, Ch. 349, L. 1997.

69-3-849. Prohibited subsidies. The commission may not subsidize the price of any telecommunications service, including wholesale prices or the prices of individual network elements, by reducing the prices to reflect an allocation or credit of revenue from the operations of an affiliated company of the carrier of telecommunications services, including a publishing affiliate.

History: En. Sec. 19, Ch. 349, L. 1997.

69-3-850. Internet protocol-enabled service not regulated. (1) An internet protocol-enabled service is not subject to regulation under this title.

(2) Except as provided in subsections (3) and (4), an agency, commission, or political subdivision may not enact, adopt, or enforce a law, rule, regulation, ordinance, standard, order, or other provision that regulates the entry, rates, terms, or conditions of any internet protocol-enabled service or otherwise treats providers of internet protocol-enabled service as carriers.

(3) This section does not:

(a) restrict authority delegated to the commission or to a state agency under federal statute, rule, or order;

(b) restrict the application of a law related to consumer protection and fair competition of general applicability to an internet protocol-enabled service or provider;

(c) modify or affect the rights or obligations of a carrier under 47 U.S.C. 251 or 47 U.S.C. 252;

(d) modify or affect commission authority over wholesale telecommunications services, rates, agreements, interconnection, or tariffs;

(e) modify or affect the rights or obligations of any entity for the use of public streets, roads, highways, and rights-of-way, including under an ordinance or agreement managing or providing access to the public right-of-way;

(f) modify or affect the assessment of nondiscriminatory fees associated with enhanced 911 service, universal service, or telecommunications relay service with respect to services described in subsections (4)(b) and (4)(c);

(g) restrict the authority of a state agency to specify requirements for the purchase of an internet protocol-enabled service; or

(h) restrict a commission requirement that a company provider of telecommunications services register as a service provider.

(4) For the purposes of this section, "internet protocol-enabled service" means:

(a) broadband internet service as defined in 90-1-602(1)(a);

(b) interconnected voice-over internet protocol service that enables real-time, two-way voice communications originating or terminating from a user's location using internet protocol or a successor protocol, that allows users to receive calls originating on the public switched telephone network and to terminate calls to the public switched telephone network, and that requires internet protocol-compatible customer premises equipment;

(c) non-interconnected voice-over internet protocol service that enables real-time voice communications over internet protocol or any successor protocol and that requires internet protocol-compatible customer premises equipment but does not otherwise fit the description of interconnected voice-over internet protocol service; or

(d) any other service, capability, function, or application that uses existing internet protocol or any successor internet protocol and enables an end user to send or receive a communication in existing internet protocol format or any successor internet protocol format, regardless of whether the communication is voice, data, or video.

History: En. Sec. 8, Ch. 476, L. 2025.

Compiler's Comments

Effective Date: Section 12, Ch. 476, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

69-3-851 through 69-3-855 reserved.

69-3-856. Repealed. Sec. 1, Ch. 76, L. 2003.

History: En. Sec. 21, Ch. 349, L. 1997.

69-3-857. Repealed. Sec. 1, Ch. 76, L. 2003.

History: En. Sec. 22, Ch. 349, L. 1997.

69-3-858. Repealed. Sec. 1, Ch. 76, L. 2003.

History: En. Sec. 23, Ch. 349, L. 1997.

69-3-859. Repealed. Sec. 1, Ch. 76, L. 2003.

History: En. Sec. 24, Ch. 349, L. 1997; amd. Sec. 1, Ch. 17, Sp. L. August 2002.

69-3-860. Repealed. Sec. 40, Ch. 426, L. 1999.

History: En. Sec. 25, Ch. 349, L. 1997.

69-3-861. Repealed. Sec. 1, Ch. 76, L. 2003.

History: En. Sec. 26, Ch. 349, L. 1997; amd. Sec. 39, Ch. 426, L. 1999; amd. Sec. 2, Ch. 17, Sp. L. August 2002.

69-3-862. Repealed. Sec. 1, Ch. 76, L. 2003.

History: En. Sec. 27, Ch. 349, L. 1997.

69-3-863 through 69-3-869 reserved.

69-3-870. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 1, Ch. 43, L. 2003.

Part 9
Rate Regulation of Small Telecommunications Providers

69-3-901. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 1, Ch. 254, L. 1987; amd. Sec. 1, Ch. 154, L. 1999.

69-3-902. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 2, Ch. 254, L. 1987.

69-3-903. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 3, Ch. 254, L. 1987; amd. Sec. 2, Ch. 154, L. 1999.

69-3-904. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 4, Ch. 254, L. 1987; amd. Sec. 3, Ch. 154, L. 1999; amd. Sec. 16, Ch. 166, L. 2023.

69-3-905. Investigations by commission. Nothing in this part limits the authority of the commission under 69-3-324 to investigate at any time and on its own motion the existing rates of a small telecommunications provider.

History: En. Sec. 5, Ch. 254, L. 1987.

69-3-906. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 6, Ch. 254, L. 1987; amd. Sec. 4, Ch. 154, L. 1999.

69-3-907. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 7, Ch. 254, L. 1987; amd. Sec. 5, Ch. 154, L. 1999.

69-3-908 and 69-3-909 reserved.

69-3-910. Repealed. Sec. 9, Ch. 476, L. 2025.

History: En. Sec. 6, Ch. 154, L. 1999.

Part 10
Telephone Low-Income Assistance Program

69-3-1001. Creation of program — amount of assistance. (1) There is a telephone low-income assistance program to provide an eligible subscriber with a discount in the monthly charge for local exchange service in the telephone network.

(2) The commission shall set the discount in the charge for local exchange service that is at least $3.50 a month for each eligible subscriber but not more than the amount that is the

difference between the otherwise applicable current rate for local exchange service and the rate as it was on April 22, 1997.

History: En. Sec. 1, Ch. 391, L. 1987; amd. Sec. 34, Ch. 349, L. 1997.

69-3-1002. Eligibility — rules. (1) A residential subscriber with single telephone line service at the subscriber's principal residence is eligible for low-income telephone assistance if the subscriber is certified by the department of public health and human services as a recipient of medicaid benefits.

(2) The department shall periodically certify and verify the eligibility of a subscriber to receive low-income telephone assistance.

(3) The department may adopt rules to establish procedures for the certification and verification of eligible subscribers.

History: En. Sec. 2, Ch. 391, L. 1987; amd. Sec. 519, Ch. 546, L. 1995.

69-3-1003. Reimbursement for discounts. (1) The public service commission shall authorize an additional monthly charge for each residential access line to fully reimburse providers of local telecommunications services for discounts given eligible subscribers.

(2) The additional monthly charge for local exchange service applies to residential subscribers of providers of local telecommunications services that participate in the low-income telephone assistance program.

(3) Participation of each provider in the low-income telephone assistance program must be administered separately by the public service commission.

History: En. Sec. 3, Ch. 391, L. 1987.

69-3-1004. Administration — rules. (1) The public service commission shall monitor the effectiveness of the low-income telephone assistance program and issue annual reports as provided in 69-3-1005.

(2) The commission may adopt rules necessary to administer and implement the low-income telephone assistance program and to receive matching federal low-income telephone assistance.

History: En. Sec. 4, Ch. 391, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-3-1005. Annual reports. The commission shall, if necessary, provide the federal communications commission with annual reports containing the following information:

(1) a description of qualification and verification procedures and other assistance measures;

(2) the costs of the low-income telephone assistance program;

(3) the number of households receiving low-income telephone assistance;

(4) the number of eligible subscribers receiving low-income telephone assistance, including subscribers who switched from other telephone services to low-income telephone service and new subscribers of low-income telephone service; and

(5) all other information requested by the federal communications commission concerning the effect of the low-income telephone assistance program on eligible subscribership levels.

History: En. Sec. 5, Ch. 391, L. 1987.

69-3-1006. Federal requirements. The public service commission, the department of public health and human services, and participating providers of local telecommunications services shall comply with federal requirements for the receipt of matching federal low-income telephone assistance.

History: En. Sec. 6, Ch. 391, L. 1987; amd. Sec. 520, Ch. 546, L. 1995.

69-3-1007. Applicability — voluntary participation or withdrawal. (1) Sections 69-3-1001 through 69-3-1006 apply to providers of regulated local telecommunications services with more than 50,000 subscribers.

(2) Regulated providers of local telecommunications services with fewer than 50,000 subscribers may petition the public service commission to participate in or withdraw from the

low-income telephone assistance program. The public service commission shall grant a petition to participate in or withdraw from the low-income telephone assistance program unless federal requirements for obtaining matching federal low-income telephone assistance require otherwise.

History: **En. Sec. 7, Ch. 391, L. 1987.**

Part 11
Intrastate Consumer Protection

69-3-1101. Purpose. The purpose of this part is to provide aggrieved customers and the commission a course of action against operator service providers that charge customers exorbitant rates for intrastate calls from a pay telephone or certain other telephones in commercial establishments and public facilities and to ensure that customers are fully aware of which charges on their monthly bill are owed to an operator service provider and of how a customer can reach the operator service provider for the purpose of contesting the amount charged.

History: **En. Sec. 1, Ch. 155, L. 1999.**

69-3-1102. Definitions. As used in this part, the following definitions apply:

(1) "Aggregator surcharge" means a charge to a customer by an entity that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for intrastate telephone calls using an operator service provider.

(2) "Customer" means a person who makes an intrastate telephone call through an operator service provider or the person accepting a collect telephone call made through an operator service provider.

(3) "Exorbitant rate" means a rate for an intrastate telephone call completed by an operator service provider that is greater than the allowable rate established by the commission. The allowable rate is inclusive of the call rate and any aggregator surcharge or other calling fee collected from a customer by the operator service provider.

(4) "Operator service provider" means any person, company, or entity that provides automated or live assistance to a customer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than:

(a) automatic completion, with billing to the telephone from which the call originated; or

(b) completion through an access code used by the customer, with billing to an account previously established with a telecommunications carrier by the customer.

(5) "Telecommunications carrier" means the same as provided in 69-3-1302.

History: **En. Sec. 2, Ch. 155, L. 1999.**

69-3-1103. Administrative rules. The commission may adopt rules that it determines are necessary to implement this part.

History: **En. Sec. 3, Ch. 155, L. 1999.**

69-3-1104. Disclosure requirements. An operator service provider shall:

(1) identify itself, audibly and distinctly, to the customer at the beginning of each telephone call and before the customer incurs any charges. Each operator service provider shall also identify itself to the billed party when verifying third-party billed calls.

(2) disclose, audibly and distinctly to the customer, at no charge and before connecting any intrastate call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further advice to the customer on how to proceed to make the call. The voice disclosure required in this section must instruct each customer that the customer may obtain applicable rate and surcharge amounts by dialing not more than two digits or by remaining on the line.

(3) upon request, fully and immediately disclose to the customer, at no charge, the operator service provider's method of collecting its charges, a description of the operator service provider's method of resolving customer complaints, a toll-free telephone number that can be used to report complaints to or contest charges of the operator service provider, and all other requested information pertinent to the customer's use of the operator service provider's services. The provisions of this subsection apply to the called party on collect calls.

(4) permit the customer to terminate the telephone call at no charge before the call is connected to the called party.

History: **En. Sec. 4, Ch. 155, L. 1999.**

69-3-1105. Operator service provider liability — penalty — costs and fees entitlement — jurisdiction. (1) An operator service provider that charges a customer more than the allowable rate is liable:

(a) to the customer for three times the cost of the call charged to the customer or $500, whichever is greater; and

(b) to the state for the penalty prescribed in 69-3-206, for other commission enforcement actions pursuant to 69-3-110, and for a violation of applicable rules authorized by 69-3-1103.

(2) In a suit or enforcement action brought against an operator service provider, the prevailing party is entitled to recover costs and attorney fees in a sum that the court finds reasonable.

(3) A customer has the right to seek remedy in a Montana court.

History: En. Sec. 5, Ch. 155, L. 1999.

69-3-1106. Billing disclosure requirements. A telecommunications carrier that enters into a contract with an operator service provider for the purpose of providing billing services for operator service providers shall include a disclosure in each customer's bill that:

(1) plainly and clearly identifies the operator service provider charges as distinct from those of the telecommunications carrier; and

(2) includes accurate information about the operator service provider so that the customer may contact the operator service provider by telephone for the purpose of contesting the charge or bringing an action against the operator service provider, or both. Upon request of the customer, the local service provider shall provide mailing address information about the operator service provider.

History: En. Sec. 6, Ch. 155, L. 1999.

Part 12
Integrated Least-Cost Resource Planning and Acquisition Act

Part Cross-References

Montana Major Facility Siting Act, Title 75, ch. 20.

69-3-1201. Short title. This part may be cited as the "Montana Integrated Least-Cost Resource Planning and Acquisition Act".

History: En. Sec. 1, Ch. 157, L. 1993.

69-3-1202. Policy — planning. (1) (a) It is the policy of the state to supervise, regulate, and control public utilities. To the extent that it is consistent with the policy and in order to benefit society, the state requires efficient utility operations, efficient use of utility services, and efficient rates.

(b) It is further the policy of the state to encourage utilities to acquire resources using a competitive solicitation process and in a manner that will help ensure a clean, healthful, safe, and economically productive environment.

(2) (a) The legislature finds that the commission may include in rates any costs that are associated with acquiring resources referred to in subsection (1) and that are consistent with this policy if the resources are actually used and useful for the convenience of the public.

(b) To advance this policy, the commission shall require long-range plans every 3 years from utilities that provide electric and natural gas service in a form and manner determined by the commission. The commission shall receive comments on the plans.

(3) This part does not constrain or limit the commission's existing statutory duties or responsibilities.

History: En. Sec. 2, Ch. 157, L. 1993; amd. Sec. 10, Ch. 449, L. 2019.

69-3-1203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Abandonment costs" means the costs incurred for resources acquired and abandoned pursuant to a plan.

(2) "Consumer counsel" means the consumer counsel provided for in 5-15-201.

(3) "Demand-side management programs" means energy efficiency, energy conservation, load management, and demand response or any combination of these measures implemented by an electric utility.

(4) "Energy conservation" means the decrease in electricity requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

(5) "Energy efficiency" means the decrease in electricity requirements of specific customers during any selected period with end-use services of those customers held constant.

(6) "Externalities" mean the impacts on society that are not directly borne by the producer in production and delivery activities, which due to imperfections in or the absence of markets are not accounted for in the producer's production and pricing decisions.

(7) "Plan" means an integrated least-cost resource plan submitted by a utility in accordance with this part and the rules adopted under this part.

(8) "Planning costs" means the costs of evaluating the future demand for services and of evaluating alternative methods of satisfying future demand.

(9) "Planning period" means the future period for which a utility develops its plan, and the period over which net present value of revenue requirements for resources is calculated. For purposes of this part, the planning period is a minimum of 20 years and begins from the date the utility files its plan with the commission.

(10) "Portfolio development costs" means the costs of preparing a resource in a portfolio for prompt and timely acquisition of the resource.

(11) "Public utility" means a public utility, as defined in 69-3-101, that provides electric or natural gas service. The term does not include municipal utilities.

History: En. Sec. 3, Ch. 157, L. 1993; amd. Sec. 11, Ch. 449, L. 2019.

69-3-1204. Integrated least-cost plan. (1) (a) The commission shall adopt rules requiring a public utility to prepare and file a plan at least every 3 years for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve and in accordance with this part.

(b) The rules must prescribe the content and the time for filing a plan.

(2) (a) A plan must contain but is not limited to:

(i) an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used and including demand-side management programs in accordance with 69-3-1209;

(ii) an annual electric demand and energy forecast developed pursuant to commission rules that includes energy and demand forecasts for each year within the planning period and historical data, as required by commission rule;

(iii) an assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to commission rules;

(iv) an assessment of the need for additional resources and the utility's plan for acquiring resources;

(v) the proposed process the utility intends to use to solicit bids for energy and capacity resources to be acquired through a competitive solicitation process in accordance with 69-3-1207; and

(vi) descriptions of at least two alternate scenarios that can be used to represent the costs and benefits from increasing amounts of renewable energy resources and demand-side management programs, based on rules developed by the commission.

(b) The utility shall fully explain, justify, and document the data, assumptions, methodologies, models, determinants, and any other inputs on which it relied to develop information required in subsection (2)(a).

(3) (a) The commission may adopt rules providing guidelines to be used in preparing a plan and identifying the criteria to be used in determining cost-effectiveness.

(b) The criteria may include externalities associated with the acquisition of a resource by a public utility.

(c) The rules must establish the minimum filing requirements for acceptance of a plan by the commission for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility with a list of filing requirements not met. A corrected plan must be submitted within the time established by the commission.

(4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the department of environmental quality and the consumer counsel.

(5) Within 120 days of receipt of a complete plan, the commission:

(a) shall review the plan;

(b) shall publish a copy of the plan;

(c) shall allow for a minimum of 60 days for the public to comment on the plan; and

(d) shall provide public meetings in accordance with 69-3-1205.

(6) (a) The commission may identify deficiencies in the plan, including:

(i) any concerns of the commission regarding the public utility's compliance with commission rules; and

(ii) ways to remedy the concerns.

(b) The commission may engage independent engineering, financial, and management consultants or advisory services to evaluate a public utility's plan. The consultants shall demonstrate knowledge and experience with resource procurement and resource portfolio management, modeling, risk management, and engineering practices. The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services. These costs are recoverable in rates.

History: **En. Sec. 4, Ch. 157, L. 1993; amd. Sec. 173, Ch. 418, L. 1995; amd. Sec. 12, Ch. 449, L. 2019; amd. Sec. 2, Ch. 632, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 632, L. 2025. Amendment effective July 1, 2025.

69-3-1205. Public comment — public meetings. (1) When developing a plan in accordance with this part and prior to submitting a plan to the commission, a public utility shall hold at least four public meetings in the utility's Montana service territory to ensure a plan best meets the diverse goals of shareholders, ratepayers, and society.

(2) The public utility shall consider written and oral comments respecting the proposed plan received during public meetings or meetings of the resource planning advisory committee held pursuant to 69-3-1208. The public utility shall summarize and respond to substantive comments received and file those as part of the plan.

(3) After a plan is submitted, the commission shall conduct two public meetings for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

(4) The department of environmental quality:

(a) shall review a plan submitted to the commission and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinate and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of compliance is submitted under Title 75, chapter 20.

(5) The consumer counsel shall review and may comment on a submitted plan.

History: **En. Sec. 5, Ch. 157, L. 1993; amd. Sec. 174, Ch. 418, L. 1995; amd. Sec. 2, Ch. 217, L. 2003; amd. Sec. 13, Ch. 449, L. 2019; amd. Sec. 3, Ch. 632, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 632, L. 2025. Amendment effective July 1, 2025.

69-3-1206. Rate treatment. (1) The commission may include in a public utility's rates:

(a) the cost of resources acquired in accordance with a plan;

(b) demand-side management programs established and implemented in accordance with 69-3-1209;

(c) the cost-effective expenditures for improving the efficiency with which the public utility provides and its customers use utility services;

(d) the costs of complying with the planning requirements of this part; and

(e) the costs of complying with a competitive solicitation process conducted in accordance with 69-3-1207.

(2) The commission may adopt rules establishing criteria governing the extent of recovery of abandonment costs.

(3) The commission may not approve a bonus or adder in the cost of a new resource acquired after April 28, 2021, to provide additional compensation for costs such as environmental externalities unless the bonus or adder is necessary to compensate for a real and actual cost required by existing regulation or existing law.

History: **En. Sec. 6, Ch. 157, L. 1993; amd. Sec. 14, Ch. 449, L. 2019; amd. Sec. 2, Ch. 300, L. 2021.**

69-3-1207. Competitive solicitation process — independent evaluator — public service commission role. (1) (a) Except as provided in subsection (6), a public utility that intends to establish [rates] for the acquisition, construction, or purchase of an electricity supply resource shall conduct a competitive solicitation process.

(b) A public utility may not prohibit a qualifying small power production facility as defined in 69-3-601 or another utility or supplier that owns an electricity supply resource or intends to construct an electricity supply resource from participating in a competitive solicitation process.

(c) An independent evaluator must be used to oversee a public utility's competitive solicitation. The commission shall select the independent evaluator pursuant to subsection (4).

(d) An independent evaluator:

(i) shall monitor the evaluation of bids pursuant to a competitive solicitation;

(ii) shall provide oversight to ensure a fair and transparent competitive solicitation;

(iii) must be familiar with competitive bid and evaluation processes; and

(iv) shall evaluate and document the process used by the public utility to solicit and evaluate bids received during a competitive solicitation.

(e) A public utility may conduct a competitive solicitation in conjunction with the development of an integrated least-cost plan in accordance with 69-3-1204.

(2) A public utility that plans to conduct a competitive solicitation process shall submit the following information to the commission:

(a) a description of the competitive solicitation process that the public utility will use and proof of compliance with subsections (1)(b) and (1)(c), if applicable; and

(b) a complete draft of the proposal soliciting electricity supply resources, citing the requested resource parameters and inviting bids from all resource types.

(3) The commission shall provide notice and accept public comment regarding information received in accordance with subsection (2).

(4) (a) Subject to public comments received pursuant to subsection (4)(b), the commission shall:

(i) solicit, evaluate, and maintain a list of independent evaluators for the competitive solicitation process;

(ii) develop a process to disqualify and remove from the list those independent evaluators who do not comply with established qualifications or who may have a conflict of interest;

(iii) update the list at least every 3 years; and

(iv) after information is submitted to the commission in accordance with subsection (2) and subject to rules adopted by the commission pursuant to subsection (4)(c), select an independent evaluator from the list.

(b) The commission shall accept public comment when developing and updating the list.

(c) On or before July 1, 2026, the commission shall adopt rules for:

(i) evaluating independent evaluators for inclusion on the list;

(ii) selecting an independent evaluator in accordance with this section;

(iii) implementing this subsection (4); and

(iv) prescribing the scope of work for the independent evaluator pursuant to the duties in 69-3-1210.

(5) (a) The commission may charge a fee to the public utility to pay for the costs of selecting and representing an independent evaluator. This fee must be deposited in the state special revenue fund to the credit of the department for expenses incurred selecting the independent evaluator. These costs are recoverable in rates.

(b) After the commission selects an independent evaluator in accordance with subsection (4), the public utility shall execute a contract for service with the independent evaluator. The contract must include the scope of work developed pursuant to subsection (4)(c)(iv) and the duties in 69-3-1210.

(6) This section does not apply to:

(a) a request for proposals or purchase by a public utility intended solely to meet the short-term operational needs of the utility for a period of less than 12 months; or

(b) an application made to the commission by a public utility to acquire, construct, or purchase an opportunity resource.

(7) For the purposes of this section, "opportunity resource" means an electricity supply resource necessary to meet a need demonstrated in a plan in accordance with 69-3-1204(2)(a)(iv) that is either new or existing and that remains unknown as to its availability for purchase until an opportunity to purchase arises.

History: En. Sec. 1, Ch. 449, L. 2019; amd. Sec. 4, Ch. 632, L. 2025.

Compiler's Comments

2025 Amendment — Code Commissioner Correction: See 2025 Session Law for amendment made by sec. 4, Ch. 632, L. 2025. Amendment effective July 1, 2025.

In (1)(a) the Code Commissioner substituted "rates" for "in rates" to more accurately reflect the apparent intended meaning.

69-3-1208. Resource planning — advisory committee. (1) A public utility shall maintain a broad-based advisory committee to review, evaluate, and make recommendations on technical, economic, and policy issues related to a utility's electricity system.

(2) The committee may advise the utility on demand-side management, portfolio planning, and management and procurement completed in accordance with this part.

(3) The utility shall publish the committee membership.

(4) A committee meeting must be open to the public unless the majority of committee members vote to close the advisory meeting.

History: En. Sec. 2, Ch. 449, L. 2019; amd. Sec. 6, Ch. 632, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 632, L. 2025. Amendment effective July 1, 2025.

69-3-1209. Electric utility demand-side management programs. (1) The commission may establish energy savings and peak demand reduction goals for an electric utility, taking into account the utility's cost-effective demand-side management potential and the need for electricity resources.

(2) The commission shall permit electric utilities to implement cost-effective electricity demand-side management programs and conservation in accordance with 69-3-701 through 69-3-712 and this part to reduce the need for additional resources.

(3) Every 3 years, an electric utility shall submit a report to the commission describing the demand-side management programs and conservation implemented by the electric utility in the previous year. The report must document:

(a) program expenditures, including incentive payments;

(b) peak demand and energy savings impacts and the techniques used to estimate those impacts;

(c) avoided costs and the techniques used to estimate those costs;

(d) the estimated cost-effectiveness of the programs;

(e) the net economic benefits of the programs; and

(f) any other information required by the commission.

History: En. Sec. 3, Ch. 449, L. 2019; amd. Sec. 2, Ch. 11, L. 2021.

69-3-1210. Independent evaluator role. (1) The independent evaluator shall oversee the competitive solicitation conducted by the public utility to protect the public interest and advance the policies in 69-3-1202.

(2) The independent evaluator shall:

(a) provide comments to the public utility and the commission on the fairness, transparency, and consistency of a competitive solicitation process with industry standards;

(b) monitor, evaluate, and observe the competitive solicitation process, paying particular attention to the public utility's evaluation of electric supply resources that may result in utility ownership of the resource to ensure that the utility conducts a fair and proper process in accordance with industry standards;

(c) notify the utility and the commission on a timely basis prior to the utility selection of the resources of any discrepancies observed in the process and resolve any differences of opinion; and

(d) prepare a closing report prior to the final selection of the resources regarding the fairness, transparency, and consistency of the process, including selection and notification of electricity supply resources taking part in the solicitation process based on industry standards. Public utilities shall include the closing report in applications for future cost-recovery dockets. The closing report must be made available to the public.

(3) The commission shall grant the independent evaluator the right of intervention in future cost-recovery proceedings for the purpose of entering the closing report into the evidentiary record during discovery and hearings.

History: En. Sec. 5, Ch. 632, L. 2025.

Compiler's Comments

Effective Date: Section 11, Ch. 632, L. 2025, provided that this section is effective July 1, 2025.

Part 13

Change in Customer's Telecommunications Carrier

69-3-1301. Purpose. The purpose of this part is to prohibit telecommunications carriers, including entities not otherwise regulated by the commission, from switching a customer's telecommunications services from one telecommunications carrier to another without the customer's consent and to prohibit charges for a product or service not requested by or provided to the customer from being placed on the customer's telephone bill.

History: En. Sec. 1, Ch. 325, L. 1997; amd. Sec. 1, Ch. 244, L. 1999; amd. Sec. 1, Ch. 249, L. 2003.

69-3-1302. Definitions. As used in this part, the following definitions apply:

(1) "Billing agent" means a telecommunications carrier that includes in a bill that it sends to a customer a charge for a product or service offered by a service provider.

(2) "Billing aggregator" means any entity, other than a service provider, that forwards the charge for a product or service offered by a service provider to a billing agent.

(3) "Customer" means a person who has purchased telecommunications services from a telecommunications carrier or who has been billed charges on a telephone bill for the services or products of another entity.

(4) "Electronic signature" has the meaning as provided in 30-18-102.

(5) "Local exchange company" means a telecommunications company that provides telephone lines or wireless service to members of the general public who are its customers.

(6) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(7) "Service provider" means any entity, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

(8) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. An entity providing other products and services is considered a telecommunications carrier only to the extent that the entity is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

History: En. Sec. 2, Ch. 325, L. 1997; amd. Sec. 1, Ch. 150, L. 2003; amd. Sec. 2, Ch. 249, L. 2003; amd. Sec. 8, Ch. 325, L. 2007.

69-3-1303. Prohibition — exceptions. (1) A telecommunications carrier may not request a change in a customer's primary interexchange carrier or local exchange company unless:

(a) the requesting carrier has obtained the customer's written or electronic signature on a form that contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) the customer affected by the change initiates the contact with the carrier in order to request the change;

(c) the carrier who has initiated the change has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission; or

(d) the change in carrier is the result of a sale or transfer of a subscriber base from one carrier to another and the carrier that has acquired the subscriber base has notified the commission and customers affected by the change in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must include the written or electronic signature of the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

History: En. Sec. 3, Ch. 325, L. 1997; amd. Sec. 2, Ch. 244, L. 1999; amd. Sec. 2, Ch. 150, L. 2003; amd. Sec. 3, Ch. 249, L. 2003.

69-3-1304. Rulemaking authority. The commission may adopt rules to implement this part.

History: En. Sec. 4, Ch. 325, L. 1997.

69-3-1305. Unauthorized change in telecommunications carrier — liability — penalty for violation. (1) A telecommunications carrier who initiates an unauthorized change in the customer's telecommunications carrier in violation of 69-3-1303 is liable:

(a) to the customer for all intrastate long-distance charges, interstate long-distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service to the customer.

(2) A telecommunications carrier or any other entity who purposely or knowingly initiates an unauthorized change of a customer's telecommunications carrier under 69-3-1303 or this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

(3) (a) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that any entity has initiated an unauthorized change of a customer's telecommunications carrier, the commission may impose for each change made in violation of 69-3-1303 a civil fine not to exceed $1,000 for each violation, which must be deposited in the general fund.

(b) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that an entity has, with a frequency to indicate a general business practice, initiated unauthorized changes of customers' telecommunications carriers, the commission may take any of the following actions:

(i) notify the secretary of state, who shall then suspend or revoke any license, registration, or other filing entitling that entity to transact business in this state;

(ii) prohibit any billing aggregator from billing charges on behalf of the carrier or other entity determined to have engaged in a pattern of violations;

(iii) prohibit a billing agent that bills directly for the carrier or other entity determined to have engaged in a pattern of violations from billing charges on behalf of that carrier or other entity;

(iv) revoke the registration of a service provider or billing aggregator; or

(v) limit the prohibitions under this subsection (3)(b) to a specific period of time. A prohibition under this subsection (3)(b) may be withdrawn upon a showing of good cause.

(4) The commission shall provide adequate time for a billing agent that is prohibited from billing on behalf of a carrier or other entity under this section to terminate a contractual agreement with that carrier or other entity.

(5) The remedies provided by this section are in addition to any other remedies, including injunctive relief, available by law.

History: En. Sec. 5, Ch. 325, L. 1997; amd. Sec. 3, Ch. 244, L. 1999; amd. Sec. 4, Ch. 249, L. 2003.

69-3-1306 and 69-3-1307 reserved.

69-3-1308. Prohibitions on charges on bill — exceptions. (1) A telecommunications carrier, service provider, or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:

(a) by written authorization, in which the telecommunications carrier, service provider, or other entity has obtained a document signed by the customer containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or

(b) by verbal authorization, in which the telecommunications carrier, service provider, or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.

(2) (a) The documentation provided for in subsection (1)(a) must be signed by the customer responsible for paying the charges on the telecommunications bill.

(b) The documentation provided for in subsection (1) may not be a part of a sweepstakes, contest, or similar promotional program.

(3) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier, service provider, or entity for products or services that the customer did not authorize or that were not provided to the customer.

(4) The provisions of subsections (1) through (3) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service, except upon a finding by the commission that services billed were neither requested nor received.

History: En. Sec. 5, Ch. 249, L. 2003.

69-3-1309. Liability for unauthorized charges on telephone bill — penalty for violation. (1) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that any entity has initiated unauthorized charges to be placed on a customer's telephone bill for services or products not provided or authorized or that a billing aggregator has caused unauthorized charges to be forwarded to a billing agent for placement on a telephone bill, the commission may impose a civil fine not to exceed $1,000 for each violation. The fines must be deposited in the state general fund.

(2) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that a carrier or service provider has, with a frequency to indicate a general business practice, initiated unauthorized charges to be placed on a customer's telephone bill for services or products not provided or authorized or that a billing aggregator has caused unauthorized charges to be forwarded to a billing agent for placement on a telephone bill, the commission may take any of the following actions:

(a) notify the secretary of state, who shall then suspend or revoke any license, registration, or other filing entitling that carrier or service provider to transact business in this state;

(b) prohibit any billing agent that bills directly on behalf of the service provider determined to have engaged in a pattern of violations from placing the service provider's unauthorized charges on a customer's telephone bill;

(c) prohibit a carrier or service provider determined to have engaged in a pattern of violations from initiating unauthorized charges to be placed on a customer's telephone bill;

(d) prohibit a billing aggregator from forwarding that entity's unauthorized charges to a billing agent;

(e) revoke the registration of the service provider or billing aggregator; or

(f) limit the prohibitions under this subsection (2) to a specific period of time. A prohibition under this subsection (2) may be withdrawn upon a showing of good cause.

(3) The commission shall provide adequate time for a billing agent that is prohibited from billing on behalf of a service provider under this section to terminate contractual agreements with that service provider.

(4) The remedies provided by this section are in addition to any other remedies, including injunctive relief, available by law.

(5) A carrier or service provider that purposely or knowingly initiates unauthorized charges to be placed on a customer's telephone bill for services or products not provided to or authorized by the customer or a billing aggregator that causes unauthorized charges to be forwarded to a billing agent for placement on a telephone bill is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

History: En. Sec. 6, Ch. 249, L. 2003.

69-3-1310. Misrepresentation concerning product or service — violations — complaints. (1) An entity may not misrepresent its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the customer's agreement to purchase the products or services of the entity and to have the charge for the product or service appear on the customer's telephone bill.

(2) If the commission finds that an entity is operating in violation of any provision of this section, the commission may:

(a) order the carrier or a billing agent that bills directly for that entity to terminate the billing and collection services for that entity. The commission shall provide adequate time for the billing agent to terminate contractual agreements with the entity. This section does not preclude a carrier or billing agent from taking action on its own to terminate billing and collection services.

(b) prohibit the entity's billing aggregator from forwarding any charges from an entity operating in violation of this section to a carrier or billing agent for placement on a customer's telephone bill.

(3) Failure by an entity to respond to commission requests for information related to an investigation of a possible violation of this section is grounds for the commission to:

(a) order the carrier, billing aggregator, or billing agent that bills directly for the entity to cease billing and collection services for the service provider; or

(b) prohibit a billing aggregator from forwarding charges to the billing agent to be placed on a customer's telephone bill.

(4) This section does not obligate a billing agent to provide billing and collection services to a billing aggregator or service provider.

(5) A telephone company has a right of indemnity against anyone who has provided it with false information as to the status of charges billed on behalf of a service provider.

History: En. Sec. 7, Ch. 249, L. 2003.

69-3-1311. Registration requirements — prohibitions — revocation. (1) A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, unless the service provider is properly registered with the commission.

(2) A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless the billing aggregator is properly registered with the commission.

(3) A billing aggregator may not forward charges to a billing agent from a service provider who is required to be registered under this section and who is not properly registered under this section.

(4) A billing agent may not directly bill on behalf of a service provider that is not the billing agent if the service provider is not properly registered, if registration is required under this section.

(5) The commission shall provide a form for registration and establish the procedure for registering with the commission. A registration remains effective until revoked by the commission or surrendered by the service provider or billing aggregator.

(6) After notice and an opportunity for a hearing, the commission may revoke a registration.

(7) The commission may revoke the registration of a service provider that has:

(a) knowingly or repeatedly billed one or more customers for unauthorized service; or

(b) engaged in any other false or deceptive billing practices.

(8) The commission may revoke the registration of a billing aggregator that has:

(a) knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider that was required to be registered with the commission and that was not properly registered; or

(b) engaged in any other false or deceptive billing practices.

(9) Immediately following a revocation of registration under this section, the commission shall provide notice of the revocation to all telecommunications carriers and registered billing aggregators doing business in Montana.

History: En. Sec. 8, Ch. 249, L. 2003.

69-3-1312 through 69-3-1314 reserved.

69-3-1315. Submission of list of entities served by billing aggregator required. Each billing aggregator doing business in Montana shall submit to the commission a list of service providers and other entities for which the billing aggregator provides billing services. The commission shall adopt rules that specify information that must be included with the list in order to enforce the provisions of this part. The list must include the name and address of a contact person for each entity.

History: En. Sec. 9, Ch. 249, L. 2003.

69-3-1316. Notice to attorney general. If the commission has reason to believe that any entity has violated any provision of the law for which a criminal penalty is provided or any law regarding fraud or consumer protection, the commission shall notify the attorney general.

History: En. Sec. 10, Ch. 249, L. 2003.

Part 14
Natural Gas Utility Restructuring and Customer Choice Act

69-3-1401. Short title. This part may be cited as the "Natural Gas Utility Restructuring and Customer Choice Act".

History: En. Sec. 1, Ch. 506, L. 1997.

69-3-1402. Definitions. As used in this part, the following definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:

(a) by and through which natural gas is received from a transmission services provider and transmitted to the customer; and

(b) operated by a distribution services provider.

(3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.

(4) "Natural gas production and gathering assets cost of service" means a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment, minerals, and mineral rights owned or leased by a public utility and used for natural gas production and gathering.

(5) "Natural gas production and gathering resources" means plants or equipment, minerals, and mineral rights used to extract natural gas from the earth and to collect, purify, measure, regulate, compress, and transport natural gas from its place of production to its connection with a transmission facility.

(6) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.

(7) "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that provides natural gas services to the public.

(8) "Open access" means that a natural gas utility has made its transmission facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.

(9) "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.

(10) "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.

(11) "Transition costs" means:

(a) a natural gas utility's net, verifiable production-related and gathering-related costs, including costs of capital, that become unrecoverable as a result of customer choice and open access. These costs include but are not limited to:

(i) regulatory assets and deferred charges that exist as a result of current regulatory practices and that may be accounted for up to the point in time that the commission issues a final order in a docket addressing transition costs, including all costs, expenses, and fees related to the issuance of transition bonds;

(ii) the above-market costs associated with existing gas supply commitments;

(iii) other natural gas utility investments rendered uneconomic as a result of implementation of customer choice and open access;

(iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts; and

(v) the costs associated with the issuance of any related transition bonds authorized by the commission pursuant to 69-3-1403.

(b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(12) "Transmission facilities" means those facilities owned, controlled, and operated by a transmission services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.

(13) "Transmission services provider" means a person controlling or operating transmission facilities.

(14) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

(15) "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, low-income energy bill discounts, low-income weatherization, and emergency low-income energy bill assistance.

History: En. Sec. 2, Ch. 506, L. 1997; amd. Sec. 1, Ch. 174, L. 2007; amd. Sec. 5, Ch. 127, L. 2009.

69-3-1403. Customer choice. (1) A natural gas utility may voluntarily offer its customers choice of natural gas supplier and provide open access to its transmission facilities, storage facilities, or distribution facilities.

(2) If a customer choice offering results in transition costs, the commission may allow those transition costs to be recovered in separate identifiable charges to customers. Upon commission approval, the natural gas utility must have the opportunity but not the obligation to finance the fixed transition costs and related financing costs using transition cost financing as provided for in 69-8-103 and 69-8-503.

History: En. Sec. 3, Ch. 506, L. 1997.

69-3-1404. Functional separation — code of conduct — emergency services — customer protection. (1) Except as provided in 69-3-1413 through 69-3-1416, a natural gas utility that provides customer choice and open access on its system shall:

(a) functionally separate its natural gas production and gathering resources from its natural gas transmission, storage, and distribution services and remove natural gas production and gathering resources from the rate base;

(b) adopt and comply with commission-approved standards of conduct to be included in a tariff to govern its natural gas transmission, storage, and distribution services; and

(c) provide emergency natural gas supply and related services to the extent necessary to maintain the operational integrity of the transmission system as determined by the commission.

(2) The commission shall develop standards that protect consumers and natural gas suppliers from anticompetitive and abusive practices.

(3) This part does not reduce or otherwise change the authority of the commission to review the prudence of natural gas purchases made by a natural gas utility for its customers that do not have a choice or that have not made a choice of natural gas suppliers or have not been assigned a natural gas supplier.

History: En. Sec. 4, Ch. 506, L. 1997; amd. Sec. 6, Ch. 127, L. 2009.

69-3-1405. Licensing — procedures — commission rulemaking. (1) The commission shall license natural gas suppliers and enforce licensing provisions pursuant to this section.

(2) A natural gas supplier shall file an application with and obtain a license from the commission to sell natural gas to customers in the state of Montana.

(3) A licensee shall:

(a) provide copies of all license applications to the commission and to all distribution services providers; and

(b) update information and file annual reports.

(4) A license application becomes effective 30 days after filing with the commission, unless the commission rejects the application during that period. If the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, shall identify alternative ways to overcome deficiencies.

(5) The commission shall promulgate rules requiring licensing information that identifies the licensee and ensures that the natural gas supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(6) The commission may require proof of a licensees financial integrity and a demonstration of adequate firm deliverability to meet load requirements.

(7) Pursuant to its own investigation or upon the complaint of an affected party, the commission may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

History: En. Sec. 5, Ch. 506, L. 1997.

69-3-1406. Reciprocity. (1) All natural gas suppliers are afforded the comparable opportunity to compete.

(2) A natural gas distribution services provider or its affiliates may not use another natural gas distribution services provider's facilities in the state of Montana to sell natural gas to customers in the state of Montana unless the natural gas distribution services provider or its affiliates offer customer choice and open access to their natural gas distribution facilities.

History: En. Sec. 6, Ch. 506, L. 1997.

69-3-1407. Optional performance-based ratemaking for natural gas utilities — commission rulemaking. (1) The commission may, upon application and after giving notice and conducting a hearing as provided in 69-3-303, authorize any natural gas utility to implement an optional form of rate regulation using a performance-based ratemaking methodology.

(2) The commission may approve a performance-based ratemaking methodology if it finds that the methodology:

(a) preserves adequate service to all classes of customers, including transportation-only customers;

(b) does not unreasonably prejudice or disadvantage any class of natural gas utility users;

(c) provides incentives for improved performance by the natural gas utility in the natural gas utility's public duties;

(d) results in rates that are not excessive; and

(e) is in the public interest.

(3) The commission may, after giving notice and conducting a hearing as provided in 69-3-303, modify or discontinue a natural gas utility's performance-based ratemaking previously authorized under this section if the commission finds that:

(a) natural gas service to one or more classes of customers has deteriorated or will deteriorate;

(b) any class of natural gas utility customer is being unreasonably prejudiced or disadvantaged;

(c) the performance-based ratemaking is not providing or will not provide reasonable incentives for improved performance by a natural gas utility in the performance of its public duties;

(d) rates are excessive compared to a natural gas utility's cost of service;

(e) terms ordered by the commission in connection with the approval of a natural gas utility's implementation of performance-based ratemaking have been violated; and

(f) the performance-based form of regulation is not in the public interest.

(4) The commission shall promulgate rules for monitoring a natural gas utility that has implemented performance-based ratemaking to ensure that the natural gas utility is in compliance with the requirements of this section.

History: En. Sec. 7, Ch. 506, L. 1997.

69-3-1408. Universal system benefits programs — establishing nonbypassable rate — exemption. (1) Except as provided in subsection (4), a natural gas utility shall implement, upon commission approval and subject to ongoing commission oversight and direction, a universal system benefits program.

(2) Except as provided in subsection (4), the commission shall establish a universal system benefits charge that natural gas transmission services providers or distribution services providers, or both, in the state of Montana shall charge to all end-use customers, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states. The charge may be established and revised through a universal system benefits charge tracking procedure. The method of assessing the charge may not disproportionately burden a large transmission services provider's customers. Within the universal system benefits charge, beginning January 1, 2007, a natural gas utility's minimum annual funding requirement for low-income weatherization and low-income energy bill assistance is established at 0.42% of a natural gas utility's annual revenue for the previous year. A natural gas utility must receive credit for its internal programs or activities that qualify as universal system benefits programs.

(3) Except as provided in subsection (4), a natural gas utility shall file an annual report of its universal system benefits charges, programs, and program funding levels with the commission in a manner prescribed by the commission.

(4) A natural gas utility that serves 200 or fewer customers is exempt from the requirements of subsections (1) through (3).

History: En. Sec. 8, Ch. 506, L. 1997; amd. Sec. 2, Ch. 174, L. 2007; amd. Sec. 1, Ch. 19, L. 2015.

69-3-1409. Repealed. Sec. 1, Ch. 107, L. 2005.

History: En. Sec. 9, Ch. 506, L. 1997; amd. Sec. 43, Ch. 19, L. 1999.

69-3-1410 through 69-3-1412 reserved.

69-3-1413. Statement of purpose. The purpose of 69-3-1413 through 69-3-1416 is to establish procedures for a natural gas utility that has restructured pursuant to this part to acquire rate-based facilities.

History: En. Sec. 1, Ch. 127, L. 2009.

69-3-1414. Acquisition of rate-based facilities. A natural gas utility that provides its customers with a choice of natural gas suppliers pursuant to 69-3-1403 and that does not own natural gas production and gathering resources on April 1, 2009, may acquire those facilities and place them in the rate base as provided in 69-3-1413 through 69-3-1416.

History: En. Sec. 2, Ch. 127, L. 2009.

69-3-1415. Application and approval of natural gas production and gathering resources. (1) A natural gas utility may apply to the commission for approval of a natural gas production and gathering resource that is not yet procured.

(2) (a) Within 45 days of the natural gas utility's submission of an application under subsection (1), the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements.

(b) If the commission determines that the application is inadequate, the commission shall, within 10 days of the determination, provide written notice to the natural gas utility of the deficiencies.

(3) The commission shall issue an order within 270 days of receipt of an adequate application for approval of an application to lease or acquire an equity interest in natural gas production and gathering resources.

(4) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the natural gas utility's submission of an application for approval.

(5) (a) The commission may approve or deny, in whole or in part, an application for approval of a natural gas production resource, a gathering resource, or both.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for approval.

(c) A commission order granting approval of an application must find that the application is in whole or in part in the public interest.

(d) The commission order may include a provision for allowable natural gas production and gathering assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in natural gas production and gathering resources.

(e) The commission order may include other findings that the commission determines necessary.

(f) A commission order that denies approval must describe why the findings required in subsection (5)(c) could not be reached.

(6) Except as otherwise provided in this part, if the commission has issued an order containing the findings required under subsection (5)(c), the commission may not subsequently disallow the recovery of costs related to the approved natural gas production and gathering resource based on contrary findings.

(7) Nothing in this section limits the commission's ability to, in any future rate proceeding, inquire into the manner in which the natural gas utility has managed, dispatched, operated, or maintained any resource or managed any natural gas supply purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a natural gas utility to reasonably manage, dispatch, operate, maintain, or administer natural gas production and gathering resources in a manner consistent with 69-3-1413 through 69-3-1416 and commission rules.

(8) By March 31, 2010, the commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part.

History: En. Sec. 3, Ch. 127, L. 2009.

69-3-1416. Use of natural gas production and gathering resources. (1) Natural gas production and gathering resources acquired by a natural gas utility pursuant to this part:

(a) must be used by the natural gas utility to serve and benefit customers that have not made a choice of natural gas suppliers within the natural gas utility's Montana service territory; and

(b) may not be removed from the rate base unless the commission finds that customers of the natural gas utility will not be adversely affected.

(2) Natural gas production and gathering assets cost of service may not be allocated to a customer being served by an alternative natural gas supplier.

History: En. Sec. 4, Ch. 127, L. 2009.

Part 15
Material Affiliate Transactions

69-3-1501. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means an entity closely connected or associated with a regulated energy utility.

(2) "Affiliate transaction" means a financial transaction between the utility operations of a regulated energy utility and an affiliate.

(3) "Material affiliate transaction" means an affiliate transaction that has a significant potential impact on the financial stability of a regulated energy utility, including but not limited to:

(a) dividend payments from a regulated energy utility to a corporate parent company if those payments would place the regulated energy utility's credit quality or property in jeopardy;

(b) intercompany loans or other extensions of credit or advances of working capital between a regulated energy utility and an affiliate if those activities would place the regulated energy utility's credit quality or property in jeopardy;

(c) the use of proceeds in issuing securities for which the assets of the regulated energy utility are pledged; or

(d) external borrowing by a regulated energy utility with a term greater than 120 days if the loan would place the regulated energy utility's credit quality or property in jeopardy.

(4) "Regulated energy utility" means a public utility with more than 100 customers that owns distribution facilities for the distribution of electricity or natural gas to the public and that is regulated by the commission pursuant to this title.

History: **En. Sec. 1, Ch. 220, L. 2005.**

69-3-1502. Commission approval of material affiliate transactions — rulemaking authority. (1) In addition to the commission's existing regulatory authority under this title and except as provided in 69-3-1503 and subsection (4) of this section, a regulated energy utility may not enter into a material affiliate transaction without the commission's review and approval.

(2) The commission shall approve or deny the material affiliate transaction. Upon a showing of good cause, the commission shall hold a public hearing on the proposed material affiliate transaction within 45 days of an official notification by the regulated energy utility to the commission that the utility is intending to enter into a material affiliate transaction.

(3) If a material affiliate transaction involves dividend payments from a regulated energy utility to a corporate parent company, the commission may limit those dividend payments if the payments would place the regulated energy utility's credit quality or property in jeopardy.

(4) A regulated energy utility may request an exemption from any of the provisions in this section, and the commission may grant the exemption on a case-by-case basis upon a showing of good cause and after notice and an opportunity for hearing.

(5) The commission may promulgate rules that implement the provisions of this part.

History: **En. Sec. 2, Ch. 220, L. 2005.**

69-3-1503. Exemption. A regulated energy utility that has entered into a stipulation agreement with the commission regarding the separation of its nonregulated utility business is exempt from the provisions of this part as long as the stipulation agreement remains effective under a federal bankruptcy court order.

History: **En. Sec. 3, Ch. 220, L. 2005.**

Part 16
Montana Energy Impact Assistance Act

69-3-1601. Short title. This part may be cited as the "Montana Energy Impact Assistance Act".

History: **En. Sec. 1, Ch. 442, L. 2019.**

69-3-1602. Purpose — legislative intent. (1) The legislature finds that it is imperative to:

(a) implement an alternative financing mechanism to address the retirement and replacement of electric infrastructure or facilities; and

(b) authorize the public service commission to review and approve one or more financing orders, if it deems approval appropriate and in the interest of ratepayers.

(2) The legislature further finds that:

(a) it is in the interest of the state and its citizens to encourage and facilitate the use of securitized ratepayer-backed bonds as a method for enabling electric utilities to lower the cost of financing the retirement or replacement of electric infrastructure or facilities under certain conditions and to empower the public service commission to review a securitization mechanism to determine whether it is consistent with the public interest and worthy of approval; and

(b) the state should authorize the issuance of low-cost securitized ratepayer-backed bonds. The proceeds of these bonds must be used solely to:

(i) lower long-term costs paid by electric utility customers by reducing financing costs of certain retired or replaced electric infrastructure or facilities; and

(ii) make available capital investment for modernized infrastructure and facilities and services, including least-cost electric generating facilities and other supply-side and demand-side resources.

History: **En. Sec. 2, Ch. 442, L. 2019.**

69-3-1603. Definitions. As used in this part, the following definitions apply:

(1) "Ancillary agreement" means any bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with Montana energy impact assistance bonds that is designed to promote the credit quality and marketability of Montana energy impact assistance bonds or to mitigate the risk of an increase in interest rates.

(2) "Assignee" means any person to which an interest in Montana energy impact assistance property is sold, assigned, transferred, or conveyed, other than as security, and any successor to or subsequent assignee of a person.

(3) "Bondholder" means any holder or owner of Montana energy impact assistance bonds.

(4) "Customer" means a person who takes electric service from an electric utility for consumption of electricity in Montana.

(5) "Electric infrastructure or facility" means:

(a) any portion of an electrical generating facility owned by an electric utility used to serve customers in Montana; or

(b) any infrastructure or facility involved in the transmission or delivery of electricity to Montana customers; or

(c) associated cleanup or remediation of an electrical generating facility.

(6) "Electric utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, including the electric utility's successors or assignees.

(7) "Financing costs" means, if approved by the commission in a financing order, costs to issue, service, repay, or refinance Montana energy impact assistance bonds, whether incurred or paid on issuance of the Montana energy impact assistance bonds or over the life of the bonds.

(8) "Financing order" means an order issued by the commission in accordance with 69-3-1606 that grants, in whole or in part, an application filed pursuant to 69-3-1605 authorizing the issuance of Montana energy impact assistance bonds in one or more series, the imposition, charging, and collection of Montana energy impact assistance charges, and the creation of Montana energy impact assistance property.

(9) "Financing party" means holders of Montana energy impact assistance bonds and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of Montana energy impact assistance bondholders.

(10) "Least-cost generation resource" means an incremental supply-side or demand-side resource that when included in an electric utility's generation portfolio produces the lowest cost among alternative resources, considering both short-term and long-term costs and assessing the likelihood of changes in future fuel prices and future environmental requirements, among other considerations.

(11) "Montana energy impact assistance bonds" means low-cost corporate securities, including but not limited to senior secured bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a scheduled maturity of no longer than 30 years and a final legal maturity date that is not later than 32 years from the issue date, that are rated AA or Aa2 or better by a major independent credit rating agency at the time of issuance, and that are issued by an electric utility or an assignee pursuant to a financing order.

(12) "Montana energy impact assistance charges" means charges in amounts determined appropriate by the commission and authorized by the commission in a financing order in order to provide a source of revenue solely to repay, finance, or refinance Montana energy impact assistance costs and financing costs that are imposed on and are a part of all customer bills and are collected in full by the electric utility that the financing order applies to, its successors or assignees, or a collection agent through a nonbypassable charge that is separate and apart from the electric utility's base rates.

(13) (a) "Montana energy impact assistance costs" means:

(i) at the option of and upon petition by an electric utility, and as approved by the commission pursuant to 69-3-1606, the pretax costs that the electric utility has incurred or will incur that are caused by, associated with, or remain as a result of the retirement or replacement of electric generating infrastructure or facilities located in Montana; and

(ii) pretax costs that an electric utility has previously incurred related to the closure or replacement of electric infrastructure or facilities occurring before July 1, 2019.

(b) Costs do not include any monetary penalty, fine, or forfeiture assessed against an electric utility by a government agency or court under a federal or state environmental statute, rule, or regulation.

(14) "Montana energy impact assistance property" means:

(a) all rights and interests of an electric utility or successor or assignee of an electric utility under a financing order for the right to impose, bill, collect, and receive Montana energy impact assistance charges as it is authorized to do solely under the financing order and to obtain periodic adjustments to the Montana energy impact assistance charges as provided in the financing order; and

(b) all revenue, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in subsection (14)(a), regardless of whether the revenue, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenue, collections, rights to payment, payments, money, or proceeds.

(15) "Montana energy impact assistance revenue" means revenue, receipts, collections, payments, money, claims, or other proceeds arising from Montana energy impact assistance property.

(16) "Nonbypassable" means that the payment of a Montana energy impact assistance charge required to repay bonds and related costs may not be avoided by any retail customer located within an electric utility service area.

(17) "Pretax costs" means costs approved by the commission, including but not limited to:

(a) unrecovered capitalized costs of retired or replaced electric infrastructure or facilities;

(b) costs of decommissioning and restoring the site of the electric infrastructure or facility;

(c) other applicable capital and operating costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds; and

(d) the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.

(18) "Successor" means, with respect to any legal entity, another legal entity that succeeds by operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restructuring, other insolvency proceeding, merger, acquisition, consolidation, or sale or transfer of assets, whether any of these occur due to restructuring of the electric power industry or otherwise.

History: **En. Sec. 3, Ch. 442, L. 2019.**

69-3-1604. Commission rulemaking. (1) The commission shall adopt rules that guide the Montana energy impact assistance bond and financing order processes in accordance with this part.

(2) The rules must establish:

(a) guidelines that are consistent with the objectives in 69-3-1602 for:

(i) meeting Montana's electricity supply resource needs; and

(ii) managing the portfolio of electricity supply resources.

(b) minimum filing requirements for applications filed pursuant to this part; and

(c) penalties for failure to comply with 69-3-1616.

(3) The commission may adopt any other rules necessary to:

(a) govern its proceedings and procedures for the filing, investigation, and hearing of applications submitted in accordance with this part; and

(b) implement the provisions of this part.

History: **En. Sec. 19, Ch. 442, L. 2019.**

69-3-1605. Financing orders — application requirements. (1) An electric utility may file an application with the commission for approval to issue Montana energy impact assistance bonds in one or more series, impose, charge, and collect Montana energy impact assistance charges, and create Montana energy impact assistance property related to the retirement or replacement of electric infrastructure or facilities in Montana.

(2) (a) Within 120 days of an electric utility's submission of an application, the commission shall determine whether the application is adequate and in compliance with the commission's minimum filing requirements established in rules adopted pursuant to 69-3-1604. If the commission determines that the application is inadequate, it shall explain the deficiencies.

(b) The commission shall take final action to approve, deny, or modify any application for a financing order as described in subsection (1) in a final order issued within 270 days of receiving an application.

(3) In addition to any other information required by the commission, an application for a financing order must include:

(a) an estimated schedule for the retirement or replacement;

(b) a specification of the effects of the proposed Montana energy impact assistance bond financing on the retirement or replacement;

(c) a proposed methodology for allocating the revenue requirement for the Montana energy impact assistance charge among customer classes;

(d) a description of the nonbypassable Montana energy impact assistance charge required to be paid by customers within the electric utility's service area for recovery of Montana energy impact assistance costs;

(e) an estimate of the net present value of electric utility customer savings expected to result if the financing order is issued as determined by a net present value comparison between the costs to customers that are expected to result from the financing of the undepreciated balances of electric infrastructure or facilities with Montana energy impact assistance bonds and the costs that would result from the application of traditional electric utility financing mechanisms to the same undepreciated balances; and

(f) one or more alternative financing scenarios in addition to the preferred scenario contained in the application.

(4) The commission shall publish a notice of the proposed change on its website and conforming to the requirements of 2-4-601 in one or more newspapers published and of general circulation within the service area of the electric utility. The notice must announce a public hearing on the application, and the commission shall hold a public hearing.

History: **En. Sec. 4, Ch. 442, L. 2019.**

69-3-1606. Issuance of financing orders. (1) After notice and hearing in accordance with 69-3-1605(4), the commission may issue a financing order if the commission finds:

(a) the Montana energy impact assistance costs described in the application related to the retirement or replacement of electric infrastructure or facilities are reasonable;

(b) the proposed issuance of Montana energy impact assistance bonds and the imposition and collection of Montana energy impact assistance charges:

(i) are just and reasonable;

(ii) are consistent with the public interest;

(iii) constitute a prudent and reasonable mechanism for the financing of Montana energy impact assistance costs described in the application; and

(iv) will provide substantial, tangible, and quantifiable benefits to customers that are greater than the benefits that would have been achieved absent the issuance of Montana energy impact assistance bonds; and

(c) the proposed structuring, marketing, and pricing of the Montana energy impact assistance bonds will:

(i) significantly lower overall costs to customers or significantly mitigate rate impacts to customers relative to traditional methods of financing; and

(ii) achieve the maximum net present value of customer savings, as determined by the commission in a financing order, consistent with market conditions at the time of sale and the terms of the financing order.

(2) (a) The financing order must:

(i) determine the maximum amount of Montana energy impact assistance costs that may be financed from proceeds of Montana energy impact assistance bonds authorized to be issued by the financing order;

(ii) describe the proposed customer billing mechanism for Montana energy impact assistance charges and include a finding that the mechanism is just and reasonable;

(iii) describe the financing costs that may be recovered through Montana energy impact assistance charges and the period over which the costs may be recovered, which must end no earlier than the date of final legal maturity of the Montana energy impact assistance bonds;

(iv) describe the Montana energy impact assistance property that is created and that may be used to pay, and secure the payment of, the Montana energy impact assistance bonds and financing costs authorized in the financing order;

(v) authorize the electric utility to finance Montana energy impact assistance costs through the issuance of one or more series of Montana energy impact assistance bonds. An electric utility is not required to secure a separate financing order for each issuance of Montana energy impact assistance bonds or for each scheduled phase of the retirement or replacement of electric infrastructure or facilities approved in the financing order;

(vi) include a formula-based adjustment mechanism for making expeditious periodic adjustments in the Montana energy impact assistance charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the Montana energy impact assistance charges in past periods or to otherwise guarantee the timely payment of Montana energy impact assistance bonds and financing costs and other required amounts and charges payable in connection with Montana energy impact assistance bonds;

(vii) include any additional findings or conclusions determined to be appropriate by the commission and in the best interest of consumers;

(viii) specify the degree of flexibility afforded to the electric utility in establishing the terms and conditions of the Montana energy impact assistance bonds, including but not limited to repayment schedules, expected interest rates, and other financing costs;

(ix) specify the timing of actions required by the order so that:

(A) the Montana energy impact assistance bonds are issued as soon as feasible following the issuance of the financing order, independent of the schedule of closing and decommissioning of the electric infrastructure or facility; and

(B) the applicant utility files to reduce its rates as required in subsection (5) simultaneously with the inception of the Montana energy impact assistance charges and independently of the schedule of closing and decommissioning of the electric infrastructure or facility; and

(x) specify a future ratemaking process to reconcile any difference between the projected pretax costs included in the amount financed by Montana energy impact assistance bonds and the final actual pretax costs incurred by the utility in retiring or replacing the electric infrastructure or facility.

(b) In a financing order, the commission may include any conditions that are necessary to promote the public interest and may grant relief that is different from that which was requested in the application, as long as the relief is within the scope of the matters addressed in the commission's notice of the application.

(3) For the purposes of a financing order, financing costs include:

(a) principal, interest, and redemption premiums that are payable on Montana energy impact assistance bonds;

(b) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing document pertaining to the bonds;

(c) any other demonstrable costs related to issuing, supporting, repaying, refunding, and servicing the bonds, including but not limited to servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other demonstrable costs necessary to otherwise ensure and guarantee the timely payment of the bonds or other amounts or charges payable in connection with the bonds;

(d) except as provided in 69-3-308, any taxes and license fees imposed on the revenue generated from the collection of a Montana energy impact assistance charge;

(e) except as provided in 69-3-308, any state and local taxes, including franchise, sales and use, and other taxes or similar charges, including but not limited to regulatory assessment fees, whether paid, payable, or accrued; and

(f) any costs incurred by the commission to hire and compensate additional temporary staff needed to perform its responsibilities under this part and in accordance with 69-3-1612(4) engage specialized counsel and expert consultants experienced in securitized electric utility ratepayer-backed bond financing similar to Montana energy impact assistance bonds.

(4) A financing order issued to an electric utility must permit and may require the creation of an electric utility's Montana energy impact assistance property pursuant to subsection (2)(a)(iv) be conditioned on, and simultaneous with, the sale or other transfer of the Montana energy impact assistance property to an assignee and the pledge of the Montana energy impact assistance property to secure Montana energy impact assistance bonds.

(5) A financing order must require the applicant utility, simultaneously with the inception of the collection of Montana energy impact assistance charges, to reduce its rates through a reduction in base rates.

History: En. Sec. 5, Ch. 442, L. 2019.

69-3-1607. Effect of financing order. (1) A financing order remains in effect until the Montana energy impact assistance bonds issued as authorized by the financing order have been paid in full and all financing costs related to the bonds have been paid in full.

(2) A financing order remains in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of an electric utility to which the financing order applies or any affiliate of the electric utility or successor entity or assignee.

(3) A financing order is irrevocable, and the commission may not reduce, impair, postpone, or terminate Montana energy impact assistance charges approved in a financing order or impair Montana energy impact assistance property or the collection or recovery of Montana energy impact assistance revenue.

(4) Notwithstanding subsection (3), on its own motion or at the request of an electric utility or any other person, the commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding Montana energy impact assistance bonds issued pursuant to the original financing order if:

(a) the commission makes all of the findings specified in 69-3-1606(1) with respect to the subsequent financing order; and

(b) the modification provided for in the subsequent financing order does not impair in any way the covenants and terms of the Montana energy impact assistance bonds to be refinanced, retired, or refunded.

History: En. Sec. 6, Ch. 442, L. 2019.

69-3-1608. Montana energy impact assistance bonds. (1) The proceeds of Montana energy impact assistance bonds must be used to recover, finance, or refinance commission-approved Montana energy impact assistance costs and financing costs and other costs that are secured by or payable from Montana energy impact assistance property.

(2) If certificates of participation or ownership are issued, references to principal, interest, or premium refer to comparable amounts under those certificates.

History: En. Sec. 7, Ch. 442, L. 2019.

69-3-1609 and 69-3-1610 reserved.

69-3-1611. Effect on commission jurisdiction. (1) Except as provided in subsection (2), if the commission issues a financing order to an electric utility, the commission may not, in exercising its powers and carrying out its duties pursuant to Title 69:

(a) consider the Montana energy impact assistance bonds issued pursuant to the financing order to be debt of the electric utility other than for income tax purposes unless it is necessary to consider the Montana energy impact assistance bonds to be debt to achieve consistency with prevailing utility debt rating methodologies;

(b) consider the Montana energy impact assistance charges paid under the financing order to be revenue of the electric utility;

(c) except as otherwise provided for in this part or for the purposes of establishing the electric utility's base rates, consider the Montana energy impact assistance costs or financing costs specified in the financing order to be the regulated costs or assets of the electric utility; or

(d) determine any prudent action taken by an electric utility that is consistent with the financing order to be unjust or unreasonable.

(2) Nothing in subsection (1):

(a) affects the authority of the commission to apply or modify any billing mechanism designed to recover Montana energy impact assistance charges;

(b) prevents or precludes the commission from investigating the compliance of an electric utility with the terms and conditions of a financing order and requiring compliance with the financing order; or

(c) prevents or precludes the commission from imposing regulatory sanctions against an electric utility for failure to comply with the terms and conditions of a financing order or the requirements of this part.

(3) The commission may not refuse to allow the recovery of any costs associated with the retirement or replacement of electric infrastructure or facilities by an electric utility solely because the electric utility has elected to finance those activities through a financing mechanism other than Montana energy impact assistance bonds.

(4) The commission shall authorize mitigating remedies to offset an electric utility's book losses, as determined necessary by the commission.

History: En. Sec. 8, Ch. 442, L. 2019.

69-3-1612. Electric utility customer protection. (1) Because the commission's approval of a financing order is irrevocable, typically addresses very large amounts of financing undertaken, and is not reviewable by future commissions, in addition to its other powers and duties, the commission shall perform comprehensive due diligence in its evaluation of an application for a financing order and shall oversee the process used to structure, market, and price Montana energy impact assistance bonds.

(2) In addition to any other authority, the commission:

(a) may attach conditions to the approval of a financing order as the commission finds appropriate to maximize the financial benefits or minimize the financial risks of the transaction to customers and to directly impacted Montana workers and communities;

(b) may specify details of the process used to structure, market, and price Montana energy impact assistance bonds, including the selection of the underwriter or underwriters;

(c) shall review and determine the reasonableness of all proposed upfront and ongoing financing costs; and

(d) shall ensure that the structuring, marketing, and pricing of Montana energy impact assistance bonds maximizes net present value customer savings, consistent with market conditions and the terms of the financing order.

(3) (a) Within 120 days after the issuance of Montana energy impact assistance bonds, the applicant electric utility shall file with the commission information regarding the actual upfront and ongoing financing costs of the Montana energy impact assistance bonds. The commission shall review the prudence of the electric utility's action to determine whether the costs resulted in the lowest overall costs that were reasonably consistent with both market conditions at the time of the issuance and the terms of the financing order.

(b) Except as provided in subsection (3)(c), if the commission determines that the electric utility's actions were not prudent or were inconsistent with the financing order, the commission may apply any remedies that are available.

(c) The commission may not apply any remedy that has the effect, directly or indirectly, of impairing the security for the Montana energy impact assistance bonds.

(4) (a) In performing its responsibilities in accordance with this part, the commission may engage outside consultants and counsel experienced in securitized electric utility ratepayer-backed bond financing similar to Montana energy impact assistance bonds, and the expenses associated with the engagement may be included as financing costs and included in the Montana energy impact assistance charge. The costs are not an obligation of the state and are assigned solely to the transaction.

(b) Expenses incurred by the commission to hire and compensate additional temporary staff needed to perform its responsibilities under this part must be included as financing costs and included in the Montana energy impact assistance charge.

(5) If a utility's application for a financing order is denied or withdrawn for any reason and Montana energy impact assistance bonds are not issued, the commission's costs of retaining

expert consultants, as authorized by subsection (4), must be paid by the applicant utility and are considered by the commission as a prudent deferred expense for recovery in the utility's future rates.

History: **En. Sec. 9, Ch. 442, L. 2019.**

69-3-1613. Judicial review of financing orders. (1) A financing order is a final order of the commission.

(2) A party aggrieved by the issuance of a financing order may petition for suspension and review of the financing order in the district court of the first judicial district, Lewis and Clark County. In the case of any petition for suspension and review, the court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

History: **En. Sec. 10, Ch. 442, L. 2019.**

69-3-1614 and 69-3-1615 reserved.

69-3-1616. Electric utilities — duties — nonbypassable charges. (1) The electric bills of an electric utility that obtains a financing order and causes Montana energy impact assistance bonds to be issued must:

(a) explicitly reflect that a portion of the charges on the bill represents Montana energy impact assistance charges approved in a financing order and, if Montana energy impact assistance property has been transferred to an assignee, must include a statement that the assignee is the owner of the rights to Montana energy impact assistance charges and that the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee;

(b) include the Montana energy impact assistance charge on each customer's bill as a separate line item titled "energy impact assistance charge" and may include both the rate and the amount of the charge on each bill; and

(c) explain to customers in an annual filing with the commission the rate impact that financing of the retirement or replacement of electric infrastructure or facilities has on customer rates.

(2) Montana energy impact assistance charges are nonbypassable and payment must be made by all existing and future customers receiving service from the electric utility or its successors or assignees under commission-approved rate schedules or under special contracts.

(3) The failure of an electric utility to comply with this section does not invalidate, impair, or affect any financing order, Montana energy impact assistance property, Montana energy impact assistance charge, or Montana energy impact assistance bonds, but does subject the electric utility to penalties under applicable commission rules.

(4) An electric utility that obtains a financing order and causes Montana energy impact assistance bonds to be issued must demonstrate in an annual filing with the commission that Montana energy impact assistance revenues are applied solely to the repayment of Montana energy impact assistance bonds and other financing costs.

History: **En. Sec. 11, Ch. 442, L. 2019.**

69-3-1617. Montana energy impact assistance property. (1) Montana energy impact assistance property described in a financing order is an existing present property right or interest in a property right even though the imposition and collection of Montana energy impact assistance charges depends on the electric utility collecting Montana energy impact assistance charges and on future electricity consumption. The property right or interest exists regardless of whether the revenues or proceeds arising from the Montana energy impact assistance property have been billed, have accrued, or have been collected.

(2) Montana energy impact assistance property described in a financing order exists until all Montana energy impact assistance bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of the Montana energy impact assistance bonds have been recovered in full.

(3) All or any portion of Montana energy impact assistance property described in a financing order issued to an electric utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the electric utility and is created for the limited purpose of acquiring, owning, or administering Montana energy

impact assistance property or issuing Montana energy impact assistance bonds as authorized by the financing order. All or any portion of Montana energy impact assistance property may be pledged to secure Montana energy impact assistance bonds issued pursuant to a financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Each transfer, sale, conveyance, assignment, or pledge by an electric utility or an affiliate of an electric utility is a transaction in the ordinary course of business.

(4) If an electric utility defaults on any required payment of charges arising from Montana energy impact assistance property described in a financing order, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the Montana energy impact assistance property to the financing parties. Any financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or assignees.

(5) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in Montana energy impact assistance property specified in a financing order issued to an electric utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or any other entity.

(6) A successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, must perform and satisfy all obligations of, and has the same duties and rights under a financing order as the electric utility to which the financing order applies and shall perform the duties and exercise the rights in the same manner and to the same extent as the electric utility, including collecting and paying to any person entitled to receive revenues, collections, payments, or proceeds of Montana energy impact assistance property described in the financing order.

History: **En. Sec. 12, Ch. 442, L. 2019.**

69-3-1618. Montana energy impact assistance bonds — legal investments — not public debt — pledge of the state. (1) Banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any money within their control in Montana energy impact assistance bonds.

(2) Montana energy impact assistance bonds issued as authorized by a financing order are not debt of or a pledge of the faith and credit or taxing power of the state, any agency of the state, or any county, municipality, or other political subdivision of the state. Holders of Montana energy impact assistance bonds may not have taxes levied by the state or by any county, municipality, or other political subdivision of the state for the payment of the principal or interest on Montana energy impact assistance bonds. The issuance of Montana energy impact assistance bonds does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of principal or interest on the Montana energy impact assistance bonds.

(3) The Montana energy impact assistance bonds issued under this part are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

History: **En. Sec. 13, Ch. 442, L. 2019.**

69-3-1619. Assignee or financing party not subject to commission regulation. An assignee or financing party that is not already regulated by the commission does not become subject to commission regulation solely as a result of engaging in any transaction authorized by or described in this part.

History: **En. Sec. 14, Ch. 442, L. 2019.**

69-3-1620. Effect of other laws. (1) If any provision of this part conflicts with any other law regarding the attachment, assignment, perfection, effect of perfection, or priority of any security interest in or transfer of Montana energy impact assistance property, the provisions of this part govern.

(2) Nothing in subsection (1) precludes a utility for which the commission has initially issued a financing order from applying to the commission for:

(a) a subsequent financing order amending the financing order as authorized by 69-3-1607(4); or

(b) approval of the issuance of Montana energy impact assistance bonds to refund all or a portion of an outstanding series of Montana energy impact assistance bonds.

History: En. Sec. 15, Ch. 442, L. 2019.

69-3-1621. Security interests in Montana energy impact assistance property. (1) The creation, perfection, and enforcement of any security interest in Montana energy impact assistance property to secure the repayment of the principal of and interest on Montana energy impact assistance bonds, amounts payable under any ancillary agreement, and other financing costs are governed by this section.

(2) The following apply to a security interest:

(a) the description or indication of Montana energy impact assistance property in a transfer or security agreement and a financing statement is sufficient only if the description or indication refers to this part and the financing order creating the Montana energy impact assistance property;

(b) a security interest in Montana energy impact assistance property is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, which may subsequently attach to the Montana energy impact assistance property unless the holder of the security interest has agreed in writing otherwise in accordance with Title 30, chapter 9A, part 3;

(c) the priority of a security interest in Montana energy impact assistance property is not affected by the commingling of Montana energy impact assistance property or Montana energy impact assistance revenue with other money. An assignee, bondholder, or financing party has a perfected security interest in the amount of all Montana energy impact assistance property or Montana energy impact assistance revenue that is pledged for the payment of Montana energy impact assistance bonds even if the Montana energy impact assistance property or Montana energy impact assistance revenue is deposited in a cash or deposit account of the electric utility in which the Montana energy impact assistance revenue is commingled with other money, and any other security interest that applies to the other money does not apply to the Montana energy impact assistance revenue.

(d) Neither a subsequent order of the commission amending a financing order as authorized by 69-3-1607, nor application of an adjustment mechanism as authorized by 69-3-1606(2)(a)(vi), affects the validity, perfection, or priority of a security interest in or transfer of Montana energy impact assistance property.

(2) (a) A security interest in Montana energy impact assistance property is created, valid, and binding as soon as:

(i) the financing order that describes the Montana energy impact assistance property is issued;

(ii) a security agreement is executed and delivered; and

(iii) value is received for the Montana energy impact assistance bonds.

(b) Once a security interest in Montana energy impact assistance property is created, the security interest attaches without any physical delivery of collateral or any other act. The lien of the security interest is valid, binding, and perfected under Title 30, chapter 9A, part 3, against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien, upon the filing of a financing statement with the secretary of state.

(3) A valid and enforceable security interest in Montana energy impact assistance property is perfected only when it has attached and when a financing order has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing order must name the pledgor of the Montana energy impact assistance property as debtor and identify the property.

History: En. Sec. 16, Ch. 442, L. 2019.

69-3-1622. Sales of Montana energy impact assistance property. (1) (a) A sale, assignment, or transfer of Montana energy impact assistance property is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the Montana energy impact assistance property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in Montana energy impact assistance property may be created when:

(i) the financing order creating and describing the Montana energy impact assistance property is effective;

(ii) the documents evidencing the transfer of the Montana energy impact assistance property are executed and delivered to the assignee; and

(iii) value is received.

(b) A transfer of an interest in Montana energy impact assistance property must be filed with the secretary of state and perfected under Title 30, chapter 9A, part 3, against all third persons, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security interest, ownership interest, or assignment in the Montana energy impact assistance property previously perfected in accordance with 69-3-1621 or this subsection (1).

(2) The characterization of a sale, assignment, or transfer as an absolute transfer and true sale, and the corresponding characterization of the property interest of the assignee is not affected or impaired by:

(a) commingling of Montana energy impact assistance revenue with other money;

(b) the retention by the seller of:

(i) a partial or residual interest, including an equity interest, in the Montana energy impact assistance property, whether direct or indirect, or whether subordinate or otherwise; or

(ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of Montana energy impact assistance revenue;

(c) any recourse that the purchaser may have against the seller;

(d) any indemnification rights, obligations, or repurchase rights made or provided by the seller;

(e) an obligation of the seller to collect Montana energy impact assistance revenues on behalf of an assignee;

(f) the treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes;

(g) any subsequent financing order amending a financing order as authorized by 69-3-1607; or

(h) any application of an adjustment mechanism as authorized by 69-3-1606(2)(a)(vi).

History: En. Sec. 17, Ch. 442, L. 2019.

69-3-1623. Use of amounts received by electric utility as consideration for its transfer of Montana energy impact assistance property. (1) Subject to commission approval as required by subsection (2), an electric utility shall expend or invest amounts the electric utility receives as consideration for its transfer of Montana energy impact assistance property to reduce its Montana energy impact costs and may invest or expand the remaining funds as follows:

(a) to build and own generation infrastructure and facilities that are least-cost generation resources, taking into consideration regulatory risk, current and future fuel cost and risk, and fuel delivery infrastructure costs, the addition of which is not inconsistent with the electric utility's resource procurement or integrated least-cost resource plan;

(b) to build, own, or purchase electricity storage capacity to the extent that the investment is either required by law or rule, is the least-cost, or is needed to increase the amount of least-cost generation resources that the electric utility is able to add to its generation portfolio;

(c) to invest in network modernization to the extent that the modernization is necessary to increase the amount of least-cost generation resources able to be added to the electric utility's system; and

(d) to replace any damaged or destroyed electric infrastructure or facilities involved in the transmission or delivery of electricity to Montana customers.

(2) In considering any application for approval of the use of Montana energy impact assistance bond proceeds, the commission shall:

(a) use its regular process for consideration of applications; and

(b) fully consider new energy technologies and future environmental regulations.

History: **En. Sec. 18, Ch. 442, L. 2019.**

Parts 17 through 19 reserved

Part 20
Renewable Power Production and Rural Economic Development
(Repealed)

69-3-2001. Repealed. Sec. 5, Ch. 542, L. 2021.
History: **En. Sec. 1, Ch. 457, L. 2005; Sec. 69-8-1001, MCA 2005; redes. 69-3-2001 by Sec. 1, Ch. 220, L. 2007.**

69-3-2002. Repealed. Sec. 5, Ch. 542, L. 2021.
History: **En. Sec. 2, Ch. 457, L. 2005; Sec. 69-8-1002, MCA 2005; redes. 69-3-2002 by Sec. 1, Ch. 220, L. 2007.**

69-3-2003. Repealed. Sec. 5, Ch. 542, L. 2021.
History: **En. Sec. 3, Ch. 457, L. 2005; Sec. 69-8-1003, MCA 2005; redes. 69-3-2003 by Sec. 1, Ch. 220, L. 2007; amd. Sec. 1, Ch. 246, L. 2007; amd. Sec. 1, Ch. 30, L. 2009; amd. Sec. 1, Ch. 118, L. 2009; amd. Sec. 1, Ch. 232, L. 2009; amd. Sec. 1, Ch. 56, L. 2011; amd. Sec. 1, Ch. 259, L. 2013; amd. Sec. 1, Ch. 328, L. 2013; amd. Sec. 1, Ch. 361, L. 2013.**

69-3-2004. Repealed. Sec. 5, Ch. 542, L. 2021.
History: **En. Sec. 4, Ch. 457, L. 2005; Sec. 69-8-1004, MCA 2005; redes. 69-3-2004 by Sec. 1, Ch. 220, L. 2007; amd. Sec. 2, Ch. 246, L. 2007; amd. Sec. 18, Ch. 491, L. 2007; amd. Sec. 1, Ch. 31, L. 2009; amd. Sec. 33, Ch. 19, L. 2011; amd. Sec. 1, Ch. 73, L. 2013; amd. Sec. 1, Ch. 197, L. 2013.**

69-3-2005. Repealed. Sec. 5, Ch. 542, L. 2021.
History: **En. Sec. 5, Ch. 457, L. 2005; Sec. 69-8-1005, MCA 2005; redes. 69-3-2005 by Sec. 1, Ch. 220, L. 2007; amd. Sec. 3, Ch. 246, L. 2007; amd. Sec. 2, Ch. 232, L. 2009; amd. Sec. 17, Ch. 277, L. 2009.**

69-3-2006. Repealed. Sec. 5, Ch. 542, L. 2021.
History: **En. Sec. 6, Ch. 457, L. 2005; Sec. 69-8-1006, MCA 2005; redes. 69-3-2006 by Sec. 1, Ch. 220, L. 2007; amd. Sec. 2, Ch. 361, L. 2013.**

69-3-2007. Repealed. Sec. 5, Ch. 542, L. 2021.
History: **En. Sec. 7, Ch. 457, L. 2005; Sec. 69-8-1007, MCA 2005; redes. 69-3-2007 by Sec. 1, Ch. 220, L. 2007; amd. Sec. 4, Ch. 246, L. 2007.**

69-3-2008. Repealed. Sec. 5, Ch. 542, L. 2021.
History: **En. Sec. 8, Ch. 457, L. 2005; Sec. 69-8-1008, MCA 2005; redes. 69-3-2008 by Sec. 1, Ch. 220, L. 2007.**

69-3-2009. Repealed. Sec. 1, Ch. 114, L. 2017.
History: **En. Sec. 1, Ch. 115, L. 2011; amd. Sec. 1, Ch. 25, L. 2013.**

69-3-2010. Repealed. Sec. 1, Ch. 114, L. 2017.
History: **En. Sec. 2, Ch. 115, L. 2011; amd. Sec. 2, Ch. 25, L. 2013.**

CHAPTER 4
UTILITY LINES AND FACILITIES

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Chapter Cross-References

Assessment of public utilities, 15-8-406, 15-23-101.
Assessment of railroads and other franchises, 15-8-407.
Report of property by utilities to Department of Revenue, 15-23-301.
Montana Telecommunications Act, Title 69, ch. 3, part 8.
Eminent domain — utility lines as public use, 70-30-102.
Vacation of plats — utility easements, 76-3-305.
Permissible easements for utilities, 76-6-203.
Reduction of slash along right-of-way of utility lines, 76-13-407.

Part 1
General Provisions

69-4-101. Use of public right-of-way for utility lines and facilities. A telegraph, telephone, electric light, natural gas, or electric power line corporation or public body or any other person owning or operating a telegraph, telephone, electric light, or electric power line or natural gas pipeline is authorized to install its respective plants and appliances necessary for service and to supply and distribute electricity and natural gas for lighting, heating, power, and other purposes and to construct the telegraph, telephone, electric light, or electric power lines or natural gas pipelines, from point to point, along and on any of the public roads, streets, and highways in the state by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires and pipelines. The telegraph, telephone, electric light, or electric power lines or natural gas pipelines must be constructed so as not to inconvenience or endanger the public in the use of the roads, streets, or highways, and nothing in this section may be construed to restrict the powers of city or town councils.

History: **En. Sec. 1000, Civ. C. 1895; amd. Sec. 1, Ch. 55, L. 1905; amd. Sec. 1, Ch. 192, L. 1907; re-en. Sec. 4400, Rev. C. 1907; re-en. Sec. 6645, R.C.M. 1921; re-en. Sec. 6645, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1945; R.C.M. 1947, 70-301; amd. Sec. 1, Ch. 230, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 230, L. 2025. Amendment effective October 1, 2025.

Cross-References

Local government provisions not to modify this section, 7-3-4302.
Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.
Eminent domain — utility lines as public use, 70-30-102.

69-4-102. Underground power lines in new service areas. (1) As used in this section:

(a) "new service area" means any subdivision or group of newly constructed or newly installed dwellings (including mobile homes) or commercial buildings which, when occupied, will generate at least five contracts for the supply of electricity; and

(b) "lines used for the distribution of electricity" means all the distribution lines in the new service area through which electricity passes before it is utilized by the consumer and the consumer's dwelling or place of business.

(2) A firm, agency, or person exercising the rights conferred by 69-4-101 shall install underground all lines used for the distribution of electricity in a new service area when technically and economically feasible.

(3) The commission may make rules to implement this section.

History: **En. 70-304 by Sec. 1, Ch. 125, L. 1974; R.C.M. 1947, 70-304.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Utility lines and facilities — definitions, 69-4-303, 69-4-401, 69-4-501.

69-4-103. Authorization to remove vegetation or other materials from utility right-of-way — notice — prohibition. (1) A utility, as defined in 69-5-102, may remove or alter any vegetation or other material within a utility right-of-way or easement if the utility:

(a) determines that the removal or alteration is reasonably necessary for the safe repair, use, operation, or maintenance of the utility's electricity or gas transmission or distribution facilities; and

(b) complies with the notice provisions of subsection (2).

(2) (a) Except as provided in subsection (2)(b), a utility shall provide an affected property owner with written notice at least 15 days prior to the removal or alteration of vegetation or other materials when the action is part of a preventative maintenance program for the utility's easements and rights-of-way. The written notice must include contact information for the utility where the affected property owner can receive information regarding the utility's right to remove or alter any vegetation or material within a utility right-of-way or easement.

(b) A utility is not required to give notice to an affected property owner when the removal or alteration of the vegetation or other materials is undertaken to alleviate an imminent threat to the safe and reliable operation of the utility's electricity or gas transmission or distribution facilities.

(3) An affected property owner may not deny access to or interfere with the activities of a utility within a utility's right-of-way or easement to remove vegetation as provided in this section.

(4) Nothing in this section may be construed to expand a utility's right-of-way or easement.

History: **En. Sec. 1, Ch. 74, L. 2009.**

69-4-104 and 69-4-105 reserved.

69-4-106. Definitions. As used in 69-4-106 through 69-4-108, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Advanced transmission technology" means a technology that increases the capacity, efficiency, and reliability of an existing or new transmission facility. For the purposes of 69-4-106 through 69-4-108, the term applies to the following technology:

(a) underground cables;

(b) advanced conductor technology, such as advanced composite conductors, high temperature low-sag conductors, and fiber optic temperature sensing conductors;

(c) high-capacity ceramic electric wire, connectors, and insulators;

(d) high-voltage direct-current technology;

(e) flexible alternate-current transmission systems;

(f) enhanced power device monitoring;

(g) power electronics and related software, including real-time monitoring and analytical software; and

(h) any other technologies the commission considers appropriate.

(2) "Certificate of public convenience and necessity" means a written authorization to operate issued by the commission for constructing an electric transmission facility.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Transmission facility" means those facilities that are controlled or operated by a utility and used to provide transmission services as determined by the federal energy regulatory commission and the public service commission. The term includes advanced transmission technology.

History: **En. Sec. 1, Ch. 595, L. 2025.**

Compiler's Comments

Effective Date: Section 5, Ch. 595, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

69-4-107. Certificate of public convenience and necessity for transmission lines and facilities — rulemaking. (1) A public utility, as defined in 69-3-101, may request a certificate of public convenience and necessity from the commission prior to commencing actual construction work on an electric transmission facility that is rated higher than 69 kilovolts.

(2) If the utility requests a certificate of public convenience and necessity from the commission pursuant to subsection (1), the department may not make a determination regarding the requirements of subsections 75-20-301(1)(a), (1)(d), and (1)(f).

(3) (a) Upon receiving a request from a public utility or entity, the commission shall determine within 300 days whether the construction of the proposed transmission facility is in the public interest and may grant or deny the certificate of public convenience and necessity.

(b) In making a determination, the commission shall consider:

(i) the need for the proposed transmission facility to ensure reliable service for customers;

(ii) the ability of the proposed transmission facility to improve Montana utility customer access to reliable and cost-effective electric generation or storage facilities;

(iii) the anticipated costs and benefits of the proposed facility;

(iv) the use of advanced transmission technology; and

(v) any other factors deemed appropriate by the commission.

(4) A commission-approved certificate of public convenience and necessity may satisfy the requirements set forth in 75-20-301(1)(a), (1)(d), and (1)(f), when the department considers siting applications for proposed transmission facilities.

(5) The commission shall adopt rules for the implementation of this section.

(6) Nothing in this section alters the requirements of Title 75, chapter 20.

(7) Nothing in this section requires the public service commission to approve recovery of costs.

History: **En. Sec. 2, Ch. 595, L. 2025.**

Compiler's Comments

Effective Date: Section 5, Ch. 595, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

69-4-108. Advanced cost approval of transmission and related facilities. (1) A public utility may apply to the commission for advanced cost approval of transmission lines and related facilities not yet procured, provided the utility complies with 69-4-107.

(2) Within 45 days of a utility's application for advanced cost approval, the commission shall determine if the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines the application is inadequate, it shall explain the deficiencies.

(3) The commission shall issue an order within 90 days after receiving an application for transmission lines and related facilities, unless the commission determines that extraordinary circumstances warrant additional time.

(4) Subject to 69-4-107(2) and after the department issues the certificate of compliance pursuant to Title 75, chapter 20, as applicable, the commission may:

(a) (i) approve or deny, in whole or in part, an application for advanced cost approval of a transmission line and facility to give the public utility a presumption in any future rate proceeding that the actual construction costs for that line are prudent if the actual construction costs are less than or equal to the approved costs; or

(ii) to the extent actual costs are greater than approved costs, there is no presumption the actual construction costs for that line are prudent, and the commission shall determine if the costs are prudent and recoverable; and

(b) consider all relevant information until the administrative record in the proceeding is closed for the commission's evaluation of an application.

History: **En. Sec. 3, Ch. 595, L. 2025.**

Compiler's Comments

Effective Date: Section 5, Ch. 595, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Part 2

Construction Standards for Utility Lines and Facilities

69-4-201. Application of national electrical safety code. (1) The national electrical safety code standards govern all construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state must be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code provides construction standards and must be enforced by the commission. Proof of compliance with the requirements of an applicable national electrical safety code standard establishes due care in the defense of a negligence claim alleging a violation of that standard.

(2) The commission shall adopt rules to implement and enforce this part. The commission shall adopt by rule standards for electrical safety. The standards must be based on standards published in the most recent edition of the national electrical safety code.

History: **En. Sec. 25, Ch. 171, L. 1917; re-en. Sec. 2701, R.C.M. 1921; re-en. Sec. 2701, R.C.M. 1935; amd. Sec. 12, Ch. 137, L. 1941; R.C.M. 1947, 24-125; amd. Sec. 1, Ch. 516, L. 1979; amd. Sec. 1, Ch. 471, L. 1989; amd. Sec. 1, Ch. 212, L. 1993.**

Cross-References

Electricians and electrical safety, Title 37, ch. 68.

Building construction standards — electrical installations, Title 50, ch. 60, part 6.

69-4-202. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **(1)En. Sec. 1, Ch. 194, L. 1939; amd. Sec. 1, Ch. 139, L. 1951; Sec. 24-142, R.C.M. 1947; (2)En. Sec. 2, Ch. 194, L. 1939; Sec. 24-143, R.C.M. 1947; (3)En. Sec. 3, Ch. 194, L. 1939; Sec. 24-144, R.C.M. 1947; R.C.M. 1947, 24-142, 24-143, 24-144; amd. Sec. 9, Ch. 43, L. 1979.**

69-4-203. Scope of law. Section 69-4-201 does not apply to:

(1) interstate railroad electrification construction except where the wires of the railroad cross or are crossed by wires belonging to others; or

(2) any electrical construction of any person using the construction for power wires if:

(a) the construction and wires and the power plant furnishing electricity to the wires are wholly owned by this person and the electricity conducted is produced and used solely by this person on the person's own premises and not sold or delivered to any other person off the person's premises;

(b) the wires or construction are not over or across any highway or public place or the property of others; and

(c) these wires have a potential of less than 450 volts between any phases.

History: **En. Secs. 16, 18, Ch. 137, L. 1941; R.C.M. 1947, 24-140(part), 24-141; amd. Sec. 2, Ch. 516, L. 1979; amd. Sec. 1993, Ch. 56, L. 2009.**

69-4-204. Regulation by local government. All ordinances or parts of ordinances of cities and towns in the state in conflict with the national electrical safety code are repealed. No ordinance in conflict with any provisions of the national electrical safety code may be enacted in any city or town in the state, and any such ordinance is void.

History: **En. Sec. 35, Ch. 171, L. 1917; re-en. Sec. 2711, R.C.M. 1921; re-en. Sec. 2711, R.C.M. 1935; R.C.M. 1947, 24-135; amd. Sec. 10, Ch. 43, L. 1979; amd. Sec. 3, Ch. 516, L. 1979.**

69-4-205. Violations. Every corporation or joint-stock company or individual which violates 69-4-201 is guilty of a misdemeanor.

History: **En. Sec. 33, Ch. 171, L. 1917; re-en. Sec. 2709, R.C.M. 1921; re-en. Sec. 2709, R.C.M. 1935; R.C.M. 1947, 24-133; amd. Sec. 4, Ch. 516, L. 1979.**

Cross-References

Criminal responsibility of corporation, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Penalty for misdemeanor, 46-18-212.

69-4-206 through 69-4-210 reserved.

69-4-211. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 1, Ch. 171, L. 1917; re-en. Sec. 2677, R.C.M. 1921; re-en. Sec. 2677, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1941; R.C.M. 1947, 24-101.**

69-4-212. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 2, Ch. 171, L. 1917; re-en. Sec. 2678, R.C.M. 1921; re-en. Sec. 2678, R.C.M. 1935; amd. Sec. 2, Ch. 137, L. 1941; amd. Sec. 1, Ch. 45, L. 1949; R.C.M. 1947, 24-102.**

69-4-213. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 3, Ch. 171, L. 1917; re-en. Sec. 2679, R.C.M. 1921; re-en. Sec. 2679, R.C.M. 1935; amd. Sec. 3, Ch. 137, L. 1941; R.C.M. 1947, 24-103.**

69-4-214. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 4, Ch. 171, L. 1917; re-en. Sec. 2680, R.C.M. 1921; re-en. Sec. 2680, R.C.M. 1935; R.C.M. 1947, 24-104.**

69-4-215. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 5, Ch. 171, L. 1917; re-en. Sec. 2681, R.C.M. 1921; re-en. Sec. 2681, R.C.M. 1935; amd. Sec. 4, Ch. 137, L. 1941; R.C.M. 1947, 24-105.**

69-4-216. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 6, Ch. 171, L. 1917; re-en. Sec. 2682, R.C.M. 1921; re-en. Sec. 2682, R.C.M. 1935; amd. Sec. 5, Ch. 137, L. 1941; R.C.M. 1947, 24-106.**

69-4-217. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 7, Ch. 171, L. 1917; re-en. Sec. 2683, R.C.M. 1921; re-en. Sec. 2683, R.C.M. 1935; amd. Sec. 6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248, L. 1947; amd. Sec. 1, Ch. 344, L. 1971; R.C.M. 1947, 24-107.**

69-4-218. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 8, Ch. 171, L. 1917; re-en. Sec. 2684, R.C.M. 1921; re-en. Sec. 2684, R.C.M. 1935; R.C.M. 1947, 24-108.**

69-4-219. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **En. Sec. 9, Ch. 171, L. 1917; re-en. Sec. 2685, R.C.M. 1921; re-en. Sec. 2685, R.C.M. 1935; amd. Sec. 7, Ch. 137, L. 1941; R.C.M. 1947, 24-109.**

69-4-220. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 10, Ch. 171, L. 1917; re-en. Sec. 2686, R.C.M. 1921; re-en. Sec. 2686, R.C.M. 1935; R.C.M. 1947, 24-110.

69-4-221. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 11, Ch. 171, L. 1917; re-en. Sec. 2687, R.C.M. 1921; re-en. Sec. 2687, R.C.M. 1935; R.C.M. 1947, 24-111.

69-4-222. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 12, Ch. 171, L. 1917; re-en. Sec. 2688, R.C.M. 1921; re-en. Sec. 2688, R.C.M. 1935; amd. Sec. 8, Ch. 137, L. 1941; R.C.M. 1947, 24-112.

69-4-223. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 13, Ch. 171, L. 1917; re-en. Sec. 2689, R.C.M. 1921; re-en. Sec. 2689, R.C.M. 1935; R.C.M. 1947, 24-113.

69-4-224. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 14, Ch. 171, L. 1917; re-en. Sec. 2690, R.C.M. 1921; re-en. Sec. 2690, R.C.M. 1935; amd. Sec. 9, Ch. 137, L. 1941; R.C.M. 1947, 24-114.

69-4-225. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 15, Ch. 171, L. 1917; re-en. Sec. 2691, R.C.M. 1921; re-en. Sec. 2691, R.C.M. 1935; amd. Sec. 10, Ch. 137, L. 1941; R.C.M. 1947, 24-115.

69-4-226. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 16, Ch. 171, L. 1917; re-en. Sec. 2692, R.C.M. 1921; re-en. Sec. 2692, R.C.M. 1935; amd. Sec. 11, Ch. 137, L. 1941; R.C.M. 1947, 24-116.

69-4-227. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 17, Ch. 171, L. 1917; re-en. Sec. 2693, R.C.M. 1921; re-en. Sec. 2693, R.C.M. 1935; R.C.M. 1947, 24-117.

69-4-228. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 18, Ch. 171, L. 1917; re-en. Sec. 2694, R.C.M. 1921; re-en. Sec. 2694, R.C.M. 1935; R.C.M. 1947, 24-118.

69-4-229. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 19, Ch. 171, L. 1917; re-en. Sec. 2695, R.C.M. 1921; re-en. Sec. 2695, R.C.M. 1935; R.C.M. 1947, 24-119.

69-4-230. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 20, Ch. 171, L. 1917; re-en. Sec. 2696, R.C.M. 1921; re-en. Sec. 2696, R.C.M. 1935; R.C.M. 1947, 24-120.

69-4-231. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 21, Ch. 171, L. 1917; re-en. Sec. 2697, R.C.M. 1921; re-en. Sec. 2697, R.C.M. 1935; R.C.M. 1947, 24-121.

69-4-232. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 22, Ch. 171, L. 1917; re-en. Sec. 2698, R.C.M. 1921; re-en. Sec. 2698, R.C.M. 1935; R.C.M. 1947, 24-122.

69-4-233. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 23, Ch. 171, L. 1917; re-en. Sec. 2699, R.C.M. 1921; re-en. Sec. 2699, R.C.M. 1935; R.C.M. 1947, 24-123.

69-4-234. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 24, Ch. 171, L. 1917; re-en. Sec. 2700, R.C.M. 1921; re-en. Sec. 2700, R.C.M. 1935; R.C.M. 1947, 24-124.

69-4-235. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 26, Ch. 171, L. 1917; re-en. Sec. 2702, R.C.M. 1921; re-en. Sec. 2702, R.C.M. 1935; amd. Sec. 13, Ch. 137, L. 1941; amd. Sec. 2, Ch. 248, L. 1947; amd. Sec. 2, Ch. 45, L. 1949; R.C.M. 1947, 24-126.

69-4-236. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 27, Ch. 171, L. 1917; re-en. Sec. 2703, R.C.M. 1921; re-en. Sec. 2703, R.C.M. 1935; R.C.M. 1947, 24-127.

69-4-237. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 28, Ch. 171, L. 1917; re-en. Sec. 2704, R.C.M. 1921; re-en. Sec. 2704, R.C.M. 1935; R.C.M. 1947, 24-128.

69-4-238. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 29, Ch. 171, L. 1917; re-en. Sec. 2705, R.C.M. 1921; re-en. Sec. 2705, R.C.M. 1935; R.C.M. 1947, 24-129.

69-4-239. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 30, Ch. 171, L. 1917; re-en. Sec. 2706, R.C.M. 1921; re-en. Sec. 2706, R.C.M. 1935; R.C.M. 1947, 24-130.

69-4-240. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 31, Ch. 171, L. 1917; re-en. Sec. 2707, R.C.M. 1921; re-en. Sec. 2707, R.C.M. 1935; R.C.M. 1947, 24-131.

69-4-241. Repealed. Sec. 6, Ch. 516, L. 1979.

History: En. Sec. 32, Ch. 171, L. 1917; re-en. Sec. 2708, R.C.M. 1921; re-en. Sec. 2708, R.C.M. 1935; R.C.M. 1947, 24-132.

Part 3

Underground Conversion of Utilities

Part Cross-References

Where wires may run — special improvement districts, 7-12-4102.
Power to require placement of utilities underground, 7-12-4132.
Revegetation of rights-of-way and disturbed areas, 7-22-2152.
Highway construction — relocation of utility easements, 60-4-103.
Permissible easements for utilities, 76-6-203.

69-4-301. Short title. This part shall be known and cited as the "Underground Conversion of Utilities Law".

History: En. Sec. 1, Ch. 429, L. 1971; R.C.M. 1947, 70-601.

69-4-302. Statement of findings and purpose. (1) The legislature finds that in many areas of the state, landowners, cities, towns, counties, rural electric cooperatives, and public utilities desire to convert existing overhead electric and communication facilities to underground locations by means of special improvement district proceedings.

(2) The legislature hereby declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken pursuant to this part, whether such areas be within the limits of a city or town or within a county.

History: En. Sec. 2, Ch. 429, L. 1971; R.C.M. 1947, 70-602.

Cross-References

Special improvement districts, Title 7, ch. 12, parts 21 and 41.

69-4-303. Definitions. As used in this part, the following words and phrases and any variations thereof shall have the following meaning:

(1) "Communication service" means the transmission of intelligence by electrical means, including but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm, and traffic control circuits or the transmission of standard television or radio signals.

(2) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(3) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

(4) "Electrical service" means the distribution of electricity for heat, light, or power.

(5) "Governing body" means the board of county commissioners or city council, as may be appropriate, depending on whether the special improvement district is located in a county or within a city or town.

(6) "Ordinance" means resolution where the governing body acts by resolution and vice versa.

(7) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

(8) "Public utility" means any public or private person, corporation, or cooperative that provides electric or communication service to the public by means of electric or communication facilities and shall include any special improvement district that provides electric or communication service to the public by means of electric or communication facilities.

(9) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground.

History: En. Sec. 3, Ch. 429, L. 1971; R.C.M. 1947, 70-603(part).

Cross-References

Alternative forms of local government, Title 7, ch. 3.

Utility lines and facilities — definitions, 69-4-401, 69-4-501.

69-4-304. Exclusion for high-voltage transmission lines. Electric facilities do not include any facilities used or intended to be used for the transmission of electrical energy at nominal voltages in excess of 25,000 volts.

History: En. Sec. 3, Ch. 429, L. 1971; R.C.M. 1947, 70-603(part); amd. Sec. 60, Ch. 7, L. 2001.

69-4-305. Effect on authority of public service commission. Nothing contained in this part shall vest any jurisdiction over any public utility in the governing body. The public service commission shall retain all jurisdiction now or hereafter conferred upon it by law.

History: En. Sec. 33, Ch. 429, L. 1971; R.C.M. 1947, 70-633; amd. Sec. 11, Ch. 43, L. 1979.

69-4-306 through 69-4-310 reserved.

69-4-311. Authorization to create special improvement districts. (1) The governing body of a county is authorized and empowered to create special improvement districts under Title 7, chapter 12, part 21, and this part, within the unincorporated portion of the county. The governing body of a city or town is authorized and empowered to create special improvement districts under Title 7, chapter 12, parts 41 and 42, and this part, within its territorial limits. The special improvement districts must provide for the conversion of existing overhead electrical and communication facilities to underground locations and the construction, reconstruction, or relocation of any other electric or communication facilities that may be incidental to the conversion.

(2) A special improvement district must include an area having a frontage of not less than 1,000 feet upon a public street, road, highway, or utilities easement along which overhead electric or communication facilities are located.

History: En. Sec. 4, Ch. 429, L. 1971; R.C.M. 1947, 70-604; amd. Sec. 5, Ch. 250, L. 1993.

Cross-References

Special improvement districts, Title 7, ch. 12, parts 21 and 41.

69-4-312. Procedure to initiate creation of district — resolution for feasibility study. (1) A governing body, on its own initiative or upon a petition signed by at least 60% of the property owners owning at least 60% of the assessable land of a proposed district requesting the creation of a special improvement district, as provided for in this part, may pass a resolution at a regular or special meeting, declaring that it finds that the special improvement district is in the public interest. The governing body shall make a finding that the formation of the special improvement district, for the purposes set out in this part, will promote the public convenience, necessity, and welfare.

(2) The resolution must state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving the area by overhead electric or communication facilities shall, within 120 days after the receipt of the resolution, make a study of the cost of conversion of its facilities in the area to underground service. The report of the study must be provided to the governing body and made available for inspection in the office of the governing body and each public utility. The governing body may not pass a resolution of intention to create a special improvement district until it has received the report. The resolution of the governing body must require that each public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and other matters as may be required by the public utilities in order to perform the work involved in the cost study. The resolution must further state the area in square feet of each lot or parcel within the proposed conversion service area.

History: En. Sec. 6, Ch. 429, L. 1971; R.C.M. 1947, 70-606; amd. Sec. 6, Ch. 250, L. 1993.

69-4-313. Cost and feasibility report. (1) The public utility report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed, insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district.

(2) The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district; provided, that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new cost and feasibility report from the public utility concerned on the basis of the amended district. Should a delay result in a significant increase of the estimated conversion costs, new hearings shall be held on the creation of the district. In the event an increase of 10% or less results from delay, only the hearing on the assessments need be held again.

History: En. Sec. 7, Ch. 429, L. 1971; R.C.M. 1947, 70-607.

69-4-314. Determination of conversion costs. In determining the conversion costs included in the cost and feasibility report required by 69-4-313, the public utility is entitled to amounts sufficient to repay it for the following, as computed and reflected by the uniform system of accounts approved by the Montana public service commission, federal communications commission, or federal power commission or if the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility:

(1) the original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(2) the estimated costs of removing the overhead electric and communication facilities less the salvage value of the facilities removed;

(3) if the estimated cost of constructing new underground facilities exceeds the estimated cost of constructing new aerial facilities, then the cost difference between the two;

(4) the cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for above ground facilities or where the preexisting easements are insufficient for the underground facilities.

History: En. Sec. 26, Ch. 429, L. 1971; amd. Sec. 8, Ch. 315, L. 1974; R.C.M. 1947, 70-626.

69-4-315. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 8, Ch. 429, L. 1971; R.C.M. 1947, 70-608.

69-4-316. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 9, Ch. 429, L. 1971; R.C.M. 1947, 70-609.

69-4-317. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 10, Ch. 429, L. 1971; R.C.M. 1947, 70-610; amd. Sec. 17, Ch. 526, L. 1983.

69-4-318. Repealed. Sec. 7, Ch. 250, L. 1993.

History: (1)En. Sec. 11, Ch. 429, L. 1971; Sec. 70-611, R.C.M. 1947; (2)En. Sec. 12, Ch. 429, L. 1971; Sec. 70-612, R.C.M. 1947; R.C.M. 1947, 70-611, 70-612(part).

69-4-319. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 12, Ch. 429, L. 1971; R.C.M. 1947, 70-612(part).

69-4-320. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 12, Ch. 429, L. 1971; R.C.M. 1947, 70-612(part).

69-4-321. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 13, Ch. 429, L. 1971; R.C.M. 1947, 70-613.

69-4-322. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 14, Ch. 429, L. 1971; R.C.M. 1947, 70-614.

69-4-323. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 5, Ch. 429, L. 1971; R.C.M. 1947, 70-605.

69-4-324. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 15, Ch. 429, L. 1971; R.C.M. 1947, 70-615.

69-4-325. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 16, Ch. 429, L. 1971; R.C.M. 1947, 70-616; amd. Sec. 18, Ch. 526, L. 1983.

69-4-326. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 17, Ch. 429, L. 1971; R.C.M. 1947, 70-617.

69-4-327. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 18, Ch. 429, L. 1971; R.C.M. 1947, 70-618.

69-4-328. Repealed. Sec. 7, Ch. 250, L. 1993.

History: (1)En. Sec. 19, Ch. 429, L. 1971; Sec. 70-619, R.C.M. 1947; (2)En. Sec. 20, Ch. 429, L. 1971; Sec. 70-620, R.C.M. 1947; R.C.M. 1947, 70-619, 70-620.

69-4-329. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 23, Ch. 429, L. 1971; R.C.M. 1947, 70-623.

69-4-330. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 21, Ch. 429, L. 1971; R.C.M. 1947, 70-621.

69-4-331. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 22, Ch. 429, L. 1971; R.C.M. 1947, 70-622.

69-4-332. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Secs. 24, 25, Ch. 429, L. 1971; R.C.M. 1947, 70-624, 70-625(part); amd. Sec. 16, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 129, Ch. 370, L. 1987.

69-4-333. Repealed. Sec. 7, Ch. 250, L. 1993.

History: En. Sec. 25, Ch. 429, L. 1971; R.C.M. 1947, 70-625(part).

69-4-334 through 69-4-350 reserved.

69-4-351. Maintenance and construction of converted facilities. The public utility shall have the duty to maintain, repair, and replace all underground facilities installed pursuant to this part. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned, maintained, and operated by the public utility and the continuity of service of the utility is essential, both of which make construction work by third persons impracticable. Therefore, the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out such of the construction work as it deems desirable.

History: En. Sec. 27, Ch. 429, L. 1971; R.C.M. 1947, 70-627(part).

69-4-352. Title to converted facilities. Title to the converted facilities shall be at all times solely and exclusively in the public utility involved, as the public is only purchasing the intangible benefits which come from converted facilities; that is, the removal of the overhead facilities and replacement by underground facilities.

History: En. Sec. 27, Ch. 429, L. 1971; R.C.M. 1947, 70-627(part).

69-4-353. Conversion of facilities on public property — notice to landowners. (1) Upon completion of the conversion of the overhead electric or communication facilities on public lands and right-of-way to underground, the public utility shall file a verified statement of the costs of the conversion with the governing body.

(2) The governing body shall mail to each landowner and purchaser of property under contract for deed a notice stating that:

(a) service from the underground facilities is available;

(b) the landowner has 60 days after the date of the mailing of the notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on the landowner's lot or parcel to underground service facilities; and

(c) after the 60-day period following the date of the mailing of the notice, the governing body will order the public utility to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area.

History: En. Sec. 28, Ch. 429, L. 1971; R.C.M. 1947, 70-628; amd. Sec. 19, Ch. 526, L. 1983; amd. Sec. 1994, Ch. 56, L. 2009.

Cross-References

Notice to purchaser of property under contract for deed, 70-20-115.

69-4-354. Conversion of facilities on private property. (1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made, at the expense of the landowner, by the public utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs, or ordinances. The public utility shall not be required to convert service lines on property, other than public lands and right-of-way, until the landowner furnishes to the public utility a permit or easement authorizing the public utility and its employees, agents, and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the public utility shall file with the governing body a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter, the governing body shall mail to each landowner a copy of such verified statement, which shall be due and payable within 30 days or as otherwise provided by the public utility.

History: En. Sec. 29, Ch. 429, L. 1971; R.C.M. 1947, 70-629.

Cross-References

Easements, Title 70, ch. 17, part 1.

69-4-355. Procedure upon failure to effect conversion on private property. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in 69-4-354 or if an owner fails to convert to underground service facilities within 60 days after the mailing to the owner of the notice provided by 69-4-353, the governing body shall order the public utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to the structure or improvement.

History: En. Sec. 30, Ch. 429, L. 1971; R.C.M. 1947, 70-630; amd. Sec. 1995, Ch. 56, L. 2009.

69-4-356. Payment of public utility. (1) Upon completion of the conversion contemplated by this part, the public utility shall present the governing body with its verified bill for conversion costs as computed pursuant to 69-4-314, but based upon the actual cost of constructing the underground facility rather than the estimated cost of the facility. In the event the conversion costs are less than the estimated conversion costs, each assessed owner within the improvement district shall receive the benefit, prorated in such form and at such time or times as the governing body may determine. The bill of the public utility shall be paid within 30 days by the governing body from the improvement district funds or such other source as is properly designated by the governing body.

(2) In determining the actual cost of constructing the underground facility, the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission, federal power commission, or Montana public service commission and as is in use at the time of the conversion by the public utility involved.

History: En. Sec. 31, Ch. 429, L. 1971; R.C.M. 1947, 70-631.

69-4-357. Prohibition on reinstallation of overhead facilities. Once removed, no overhead electric or communication facilities shall be installed in a special improvement district for conversion of overhead electric and communication facilities, except as authorized by this part.

History: En. Sec. 32, Ch. 429, L. 1971; R.C.M. 1947, 70-632.

69-4-358. Postponement of conversion until certain actions occur. If a special improvement district is established pursuant to this part, the public utility involved shall not be required to commence conversion until the ordinance, the assessment roll, and the issuance of bonds have become final and until no civil action has been filed or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

History: **En. Sec. 35, Ch. 429, L. 1971; R.C.M. 1947, 70-635.**

Part 4
Relocation of Overhead Utility Lines

Part Cross-References

Relocation of utilities' facilities, 60-4-402.

Eminent domain — public uses enumerated, 70-30-102.

69-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural improvement" includes, without limitation, sprinkler irrigation systems.

(2) "Overhead utility line" means a facility for the transmission or distribution of electricity or telephone messages along wires or cables suspended above the ground between single or double poles and their respective anchors.

History: **En. 24-201 by Sec. 1, Ch. 123, L. 1975; R.C.M. 1947, 24-201.**

Cross-References

Utility lines and facilities — definitions, 69-4-303, 69-4-501.

69-4-402. Petition for relocation of overhead line. An owner of agricultural land across which an overhead utility line has been constructed may petition the district court for an order for relocation of the line for the purpose of installing an agricultural improvement. The petition shall set forth the nature of the proposed agricultural improvement, the increase in productivity of the land anticipated to result from the improvement, and a feasible alternative route, across other land to be provided by the petitioner at no cost to the owner of the overhead utility line.

History: **En. 24-202 by Sec. 2, Ch. 123, L. 1975; R.C.M. 1947, 24-202.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

69-4-403. Hearing and order. The district court shall, upon notice to the owner of the overhead utility line, hear evidence bearing upon the matters presented in the petition. If the evidence establishes a substantial improvement in agricultural productivity and the feasibility of the relocated route, the court shall grant or modify and grant, as modified, the petition and order the owner of the line to relocate the line.

History: **En. 24-203 by Sec. 3, Ch. 123, L. 1975; R.C.M. 1947, 24-203.**

69-4-404. Costs of relocation. The costs of relocating an overhead utility line as ordered under 69-4-403 must be paid by the owner of the land.

History: **En. 24-204 by Sec. 4, Ch. 123, L. 1975; R.C.M. 1947, 24-204; amd. Sec. 1, Ch. 141, L. 1993.**

Part 5
Excavations Near Underground Facilities

69-4-501. Definitions. The following definitions apply to this part:

(1) "Agricultural locate request" means a request for a locate and mark that is requested based on the perimeter boundary of an agricultural field:

(a) by a property owner or excavator prior to agricultural activity; or

(b) by a property owner or excavator prior to conducting soil probing or testing.

(2) (a) "Business day" means any day beginning at midnight and ending 24 hours later, other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(b) When a holiday listed in subsection (2)(a) occurs on a Saturday, the preceding Friday is not considered a business day. When a holiday listed in subsection (2)(a) occurs on a Sunday, the following Monday is not considered a business day.

(3) "Civil penalty" means a penalty levied by the department in accordance with 69-4-524 and 69-4-525.

(4) "Council" means the underground facility protection advisory council provided for in 69-4-520.

(5) "Damage" or "damages" means any impact upon or removal of support from an underground facility as a result of excavation or demolition that, according to the operating practices of the underground facility owner, would necessitate the repair of the facility.

(6) "Department" means the department of labor and industry provided for in 2-15-1701.

(7) "Designated service area" means a geographic area defined using state and county boundaries or further defined by the members of a notification center in operation on July 1, 2017. There may not be more than two designated service areas in Montana.

(8) "Emergency excavation" means an excavation in response to an emergency locate request that is necessary to:

(a) alleviate a condition that constitutes a clear and present danger to life or property; or

(b) repair a customer outage involving a previously installed utility-owned facility.

(9) "Emergency locate request" means a request for a locate and mark that is requested for:

(a) a condition that constitutes a clear and present danger to life or property; or

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

(10) "Engineering locate request" means a request for a locate and mark to identify underground facilities for planning and design purposes.

(11) "Event" means damages to an underground facility, if:

(a) the underground facility is not a jurisdictional pipeline; and

(b) the underground facility owner determines the damages are not an incident.

(12) (a) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving.

(b) Excavation does not include:

(i) surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line;

(ii) plowing, cultivating, planting, harvesting, or similar agricultural activities in areas cultivated:

(A) within the last 10 years, unless the activities disturb the soil to a depth of 18 inches or more; or

(B) within the last 14 months, to a depth greater than 18 inches, unless the activities disturb the soil to a depth of more than 24 inches;

(iii) gardening by homeowners or occupants in a previously established garden area unless the gardening disturbs the soil to a depth of 12 inches or more; or

(iv) landscaping by homeowners or occupants unless using mechanized equipment or disturbing soil to a depth of 12 inches or more.

(13) "Excavator" means a person conducting the excavation activities defined in subsection (12).

(14) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(15) "Incident" means:

(a) notwithstanding 69-4-529(6), unless the underground facility is owned by the excavator, a violation of the provisions of 69-4-502 or 69-4-503 by an excavator that, at a single location on a single day, results in damage to an underground facility; or

(b) a violation of the provisions of 69-4-503(3) by an underground facility owner that, at a single location on a single day, results in damage to an underground facility.

(16) "Jurisdictional pipeline" means a pipeline subject to regulation by the U.S. department of transportation pipeline and hazardous materials safety administration in accordance with 49 CFR 190-199, the Montana public service commission, or both.

(17) "Locatable underground facility" means an underground facility that can be field-located and field-marked with reasonable accuracy.

(18) "Locate" means the use of specialized equipment to identify the location of underground facilities or the actual location of underground facilities identified by the use of specialized equipment.

(19) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location or absence of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility and the width of the facility if it is greater than 6 inches.

(20) "Notification center" means an entity whose membership is open to and is contracting with underground facility owners with underground facilities within a notification center's designated service area.

(21) "Notify", "notice", or "notification" means the completed delivery of information to a person. The delivery of information includes but is not limited to the use of electronic data transfer.

(22) "Outgoing locate request" means an electronic or other document transmitted from a notification center to all member underground facility owners affected by a request for a locate.

(23) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency and includes a trustee, receiver, assignee, or personal representative of the listed entities.

(24) "Positive response" means notification through an electronic system provided by a notification center that is available to underground facility owners and excavators and is used for communicating and documenting the status of a request for a locate.

(25) "Property owner" means a person owning real property in Montana, its agents, and employees. The term does not include the owner of an easement.

(26) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

(27) "Request for a locate" means the process by which an excavator communicates with a notification center a request for underground facilities to be located and marked in an area where an excavation is planned. A request for a locate that is not an agricultural locate request and is not within city limits or within an area of an authority as defined in 75-6-304 may not exceed 2 miles long by 1,000 feet wide. A request for a locate that is not an agricultural locate request and is within city limits or within an area of an authority as defined in 75-6-304 may not exceed 2,000 feet long by 300 feet wide.

(28) "Third party" means a person who is not an excavator or an underground facility owner.

(29) (a) "Underground facility" means a facility buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, fiber optics, electrical energy, oil, gas, or other substances. The term includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items.

(b) The term does not include:

(i) shallow underground water systems designed to irrigate lawns, gardens, or other landscaping;

(ii) privately owned water and sewer lines from private property extending into public rights-of-way to interconnect with public water and sewer; or

(iii) an underground facility used solely to furnish services or commodities to real property, if no part of the underground facility is located in a public street, alley, or right-of-way dedicated to the public use.

(30) "Underground facility owner" means a person owning, controlling, or having the responsibility to maintain an underground facility.

History: En. Sec. 1, Ch. 180, L. 1971; R.C.M. 1947, 32-4801; amd. Sec. 1, Ch. 286, L. 1991; amd. Sec. 1, Ch. 179, L. 1997; amd. Sec. 61, Ch. 7, L. 2001; amd. Sec. 1, Ch. 544, L. 2005; amd. Sec. 13, Ch. 326, L. 2017.

Cross-References

Utility lines and facilities — definitions, 69-4-303, 69-4-401.

69-4-502. Information to be sought before excavation — notification — exceptions. (1) (a) Except as provided in subsection (2), an excavator may not make or begin an excavation without first obtaining information concerning the possible location of an underground facility from each underground facility owner having the right to bury underground facilities that is a member of a notification center pursuant to subsection (3).

(b) Information concerning the possible location of underground facilities in accordance with subsection (1)(a) is obtained when:

(i) underground facilities are located and marked in accordance with 69-4-503; or

(ii) underground facility owners notified by a notification center respond through the notification center that their underground facilities are located and marked, or that locating or marking is not necessary, and the excavator receives a positive response that locates and marks are either complete or unneeded.

(2) (a) A registered land surveyor or a person under the supervision of a registered land surveyor may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway or at the intersection of the center lines of public streets.

(b) The registered land surveyor, prior to hand digging, shall obtain proper approval from the appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference the monument upon exposure.

(c) The governing authority is not liable for any damages caused or suffered by the registered land surveyor or any person under the supervision of the registered land surveyor.

(d) The registered land surveyor is liable for damages incurred regarding facility destruction.

(e) An underground facility owner is not liable for any damages suffered by the registered land surveyor or any person under the control of the registered land surveyor.

(3) An underground facility owner must be a member of a notification center.

(4) (a) Beginning October 1, 2017, an underground facility owner shall pay an annual fee pursuant to 69-4-522(2)(c) to the department.

(b) Beginning July 1, 2017, to facilitate the collection of annual fees and to assist with the proper assessment of civil penalties, a notification center that serves underground facilities located in Montana shall annually, on a date determined by the department, provide the department with:

(i) a list of all its underground facility owners who are members;

(ii) a list of the outgoing locate requests for each underground facility owner and the requests for a locate and mark from each excavator over the past 12-month period; and

(iii) a list of all incident reports received over the past 12-month period.

History: (1)En. Sec. 2, Ch. 180, L. 1971; Sec. 32-4802, R.C.M. 1947; (2)En. Sec. 3, Ch. 180, L. 1971; Sec. 32-4803, R.C.M. 1947; R.C.M. 1947, 32-4802, 32-4803(part); amd. Sec. 2, Ch. 286, L. 1991; amd. Sec. 1, Ch. 393, L. 1993; amd. Sec. 2, Ch. 179, L. 1997; amd. Sec. 14, Ch. 326, L. 2017.

Cross-References

County Clerk and Recorder, Title 7, ch. 4, part 26.

Professional land surveyors, Title 37, ch. 67.

69-4-503. Notification — locating and marking. (1) Before beginning an excavation, the excavator shall notify, through a notification center, all owners of underground facilities in the area of the proposed excavation. Except as provided in subsection (9), notifications are limited to excavation work intended to commence within 10 days and completed within 30 days of the notification.

(2) An excavator shall provide adequate information to the owners of underground facilities in order to locate and mark the location of underground facilities.

(a) Adequate information must allow the person completing the locate to determine the area where the proposed excavation will occur. The information may include but is not limited to marking the path of the proposed excavation with white paint, marking the path of the proposed excavation with white flagging, or other clear marking that allows a person to determine the path of the proposed excavation.

(b) If the person completing the locate is unable to determine the path of the proposed excavation based on markings or other communications with the excavator, the excavator shall meet with the person completing the locate at the site where the excavation is proposed.

(3) After an excavator has notified the appropriate notification center of a proposed excavation, an owner of an underground facility shall:

(a) except as provided in subsection (3)(b) and in accordance with subsection (5), locate and mark the location within 2 business days;

(b) locate and mark the location within 5 business days or within 5 business days of a date agreed to after a meeting between the person conducting the locate and the excavator at the site where the excavation is proposed, if the locate is required for an engineering locate request; or

(c) respond as soon as practicable if the excavator notifies the notification center that an emergency exists.

(4) (a) After an underground facility owner locates and marks the location of underground facilities, the excavator shall determine if weather, time, or other factors may have affected location marks, warranting relocation of the facilities.

(b) Except as provided in subsection (9), if excavation has not occurred within 30 days of the location and marking being completed, the excavator shall request that the underground facility be located and marked again before excavating.

(c) (i) If an excavation has not occurred at a site within 30 days of the locate and mark being completed on two occasions and an excavator makes a third request for locate, the excavator is responsible for costs associated with the subsequent location and marking of the underground facility.

(ii) If an excavator disputes the costs required in subsection (4)(c)(i), the excavator has the burden of proof or must demonstrate circumstances beyond the excavator's control delayed the excavation.

(5) Upon receipt of the notice provided for in this section, the underground facility owner shall provide the excavator with reasonably accurate information as to the owner's locatable underground facilities by surface locating and marking the location of the facilities. If there are identified but unlocatable underground facilities, the underground facility owner shall provide the excavator with the best available information as to their locations. If an underground facility owner has knowledge of prior existing oil and gas development, an underground facility owner shall advise the excavator of the activity, and an excavator shall proceed in accordance with subsection (8). An excavator who proceeds in accordance with subsection (8) is not responsible for damages to an underground facility that cannot be located by the underground facility owner. After a locate is complete, the excavator is responsible for preserving the markings.

(6) If an excavator discovers an underground facility that has not been located and marked, the excavator shall stop excavating in the vicinity of the facility and notify the underground facility owner or the notification center.

(7) An underground facility owner may attempt to identify the location of a private underground facility connected to the owner's facility, but the underground facility owner is not liable for the accuracy of the locate.

(8) The act of obtaining information as required by this part does not excuse an excavator making any excavation from doing so in a careful and prudent manner or excuse the excavator from liability for any damage or injury resulting from the excavator's negligence.

(9) If an excavator makes an agricultural locate request for soil probing or testing, new underground facilities have not been buried or placed in the area encompassed by the locate, and the request duplicates a locate and mark completed in the last 12 months, the excavation work limitations in subsection (1) do not apply. The excavator shall provide the duplicate locate and mark information to the notification center prior to excavation, and a new locate and mark may be required.

History: En. Sec. 3, Ch. 180, L. 1971; R.C.M. 1947, 32-4803(part); amd. Sec. 1, Ch. 43, L. 1983; amd. Sec. 3, Ch. 286, L. 1991; amd. Sec. 3, Ch. 179, L. 1997; amd. Sec. 15, Ch. 326, L. 2017.

69-4-504. Information to be part of architects' and engineers' plans. (1) Architects and engineers designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information from underground facility owners and then make the information a part of the plan by which the contractors operate. The underground facility owners shall make available all records showing the locations of underground facilities and shall provide engineering locate requests pursuant to 69-4-503.

(2) This section does not excuse a person from the obligation imposed by 69-4-502 when excavating.

History: En. Sec. 8, Ch. 180, L. 1971; R.C.M. 1947, 32-4808; amd. Sec. 2, Ch. 43, L. 1983; amd. Sec. 4, Ch. 286, L. 1991; amd. Sec. 4, Ch. 179, L. 1997; amd. Sec. 16, Ch. 326, L. 2017.

Cross-References

Architecture, Title 37, ch. 65.

Engineers, Title 37, ch. 67.

69-4-505. Repealed. Sec. 19, Ch. 326, L. 2017.

History: (1)En. Sec. 4, Ch. 180, L. 1971; Sec. 32-4804, R.C.M. 1947; (2)En. Sec. 5, Ch. 180, L. 1971; Sec. 32-4805, R.C.M. 1947; (3)En. Sec. 6, Ch. 180, L. 1971; Sec. 32-4806, R.C.M. 1947; R.C.M. 1947, 32-4804, 32-4805, 32-4806; amd. Sec. 2, Ch. 544, L. 2005.

69-4-506. Repealed. Sec. 6, Ch. 179, L. 1997.

History: En. Sec. 7, Ch. 180, L. 1971; R.C.M. 1947, 32-4807.

69-4-507. Public authority — liability. A public authority, as defined in 18-1-201, that has jurisdiction over a right-of-way is not liable for improper or unauthorized installations made by persons or entities other than the public authority or those acting at its discretion.

History: En. Sec. 5, Ch. 286, L. 1991.

Cross-References

Governmental liability and insurance covering liability, Title 2, ch. 9.

69-4-508. Emergency location and excavation. (1) When an emergency excavation is required, the excavator shall notify the notification center. An underground facility owner shall respond as soon as is practical after notification.

(2) Making an emergency locate request or an emergency excavation that is not an emergency locate request or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and is subject to the penalties under 45-7-204.

History: En. Sec. 5, Ch. 179, L. 1997; amd. Sec. 17, Ch. 326, L. 2017.

69-4-509 and 69-4-510 reserved.

69-4-511. Repealed. Sec. 6, Ch. 179, L. 1997.

History: En. Sec. 1, Ch. 184, L. 1987.

69-4-512. Judicial review. (1) An excavator subject to repair costs may have repair costs reviewed by a court of competent jurisdiction.

(2) An excavator or underground facility owner subject to a civil penalty in accordance with 69-4-524 or 69-4-525 may have the civil penalty reviewed by a court of competent jurisdiction as provided in 2-4-702.

History: En. Sec. 3, Ch. 544, L. 2005; amd. Sec. 18, Ch. 326, L. 2017.

69-4-513. Repealed. Sec. 19, Ch. 326, L. 2017.

History: En. Sec. 4, Ch. 544, L. 2005.

69-4-514. Repealed. Sec. 19, Ch. 326, L. 2017.

History: En. Sec. 5, Ch. 544, L. 2005.

69-4-515 through 69-4-519 reserved.

69-4-520. Underground facility protection advisory council. (1) There is an underground facility protection advisory council consisting of 11 members.

(2) Members must be appointed by the governor as follows:

(a) one member representing owners or operators of an underground facility that is a jurisdictional pipeline in Montana that is not a public utility as defined in 69-3-101;

(b) one member representing a public utility, as defined in 69-3-101, that owns an underground facility that is a jurisdictional pipeline in Montana;

(c) one member representing a public utility, as defined in 69-3-101, that owns an underground facility that is an electric distribution or transmission line in Montana;

(d) one member representing a rural electric cooperative operating in Montana;

(e) one member representing a telecommunications provider with more than 50,000 subscriber lines in Montana;

(f) one member representing a telecommunications provider with less than 50,000 subscriber lines in Montana;

(g) one member representing a municipal sewer or water system or a municipal water supply system established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44;

(h) one member representing a local government utility that is a county or consolidated city and county water or sewer district as defined in Title 7, chapter 13, parts 22 and 23;

(i) one member representing an authority as defined in 75-6-304; and

(j) two members representing excavators.

(3) The council's membership may not include more than one representative from the same partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency, including corporate subsidiaries or affiliates.

(4) The council is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(5) The appointed members serve staggered terms of 3 years. The initial appointments are as follows: two members for 1-year terms, four members for 2-year terms, and five members for 3-year terms.

(6) Members of the council are not entitled to compensation for their services.

History: En. Sec. 1, Ch. 326, L. 2017.

69-4-521. Duties of council. (1) The council shall meet at least annually to advise the department in its administration of this part.

(2) To promote efficiency, cost-effectiveness, and safety, the council shall work cooperatively with:

(a) the department;

(b) underground facility owners and their representatives;

(c) excavators;

(d) property owners; and

(e) interested members of the public.

(3) The council shall:

(a) advise the department in its duty to collect civil penalties in accordance with 69-4-524 and 69-4-525;

(b) provide recommendations to the department in determining grants awarded in accordance with 69-4-528;

(c) assist the department in the mediation and resolution of disputed civil penalties in accordance with 69-4-526; and

(d) advise the department on other significant matters concerning the administration and enforcement of this part, including rulemaking.

History: En. Sec. 2, Ch. 326, L. 2017.

69-4-522. Duties of department — rulemaking. (1) The department shall:

(a) assess civil penalties pursuant to 69-4-524 and 69-4-525;

(b) maintain incident reports;

(c) collect fees from underground facility owners in accordance with rules adopted pursuant to 69-4-502(4)(a) and subsection (2)(c) of this section;

(d) collect fines for failures to file incident reports in accordance with 69-4-529;

(e) award grants in accordance with 69-4-528; and

(f) conduct mediation and contested cases regarding disputed civil penalties in accordance with 69-4-526.

(2) The department shall adopt rules to implement this part. Rules must provide for the:

(a) assessment and collection of civil penalties provided for in 69-4-524 and 69-4-525;

(b) reporting and collection of incident reports pursuant to 69-4-529;

(c) collection of annual fees of up to $0.10 per outgoing locate request issued to each individual underground facility owner by a notification center. The fee must be based on the number of outgoing locate requests that an underground facility owner received in the previous 12-month period.

(d) procedures, including but not limited to application and filing requirements for mediation and the review of disputed penalties; and

(e) procedures for grant funding authorized in 69-4-528. The rules for grant funding must include but are not limited to:

(i) eligibility requirements for notification centers applying for grants;

(ii) criteria for awarding grants; and

(iii) reporting procedures for grant recipients.

(3) Rules must be adopted pursuant to the Montana Administrative Procedure Act.

(4) The department may take into account and rely on findings made by a notification center or other nonprofit entities to assist in making determinations necessary for the assessment of a civil penalty.

History: **En. Sec. 3, Ch. 326, L. 2017.**

69-4-523. Tort liability for underground facility damage. (1) (a) Except as provided in subsection (1)(b), an excavator who damages an underground facility is liable for the entire cost of the repair of the underground facility.

(b) If an underground facility is damaged because an underground facility owner failed to complete a locate in accordance with 69-4-503 or provided an inaccurate locate or marks, the underground facility owner who failed to complete the locate or provided an inaccurate locate or marks is responsible for the entire cost of the repair of the underground facility.

(c) Liability in accordance with this subsection (1) is not a bar to other appropriate civil remedies for damages.

(2) Paying a civil penalty in accordance with this part is not:

(a) an admission of liability; or

(b) a bar to other appropriate civil remedies.

(3) If a person damages an underground facility and there is a release of gas or a hazardous liquid, the person shall call 9-1-1 immediately and request emergency services.

(4) If an excavator damages an underground facility, the excavator shall:

(a) immediately make a 9-1-1 call and request emergency services, if the underground facility is a jurisdictional pipeline and there is a release of gas or a hazardous liquid; and

(b) as soon as practicable, contact the owner of the underground facility. If the excavator is unable to reach the underground facility owner, the excavator shall contact the proper notification center.

(5) This section may not be construed to require the involvement of the department in civil remedies for damages.

History: **En. Sec. 4, Ch. 326, L. 2017.**

69-4-524. Underground facilities damage — excavator civil penalties. (1) Except as provided in 69-4-529(3), within 14 days of receiving an incident report in accordance with 69-4-529, the department shall issue a civil penalty in accordance with this section.

(2) Except as provided in subsection (4), if an excavator damages an underground facility that is not a jurisdictional pipeline, the civil penalty is the greater of $50 or twice the amount of the last civil penalty issued to the excavator, not to exceed $10,000.

(3) Except as provided in subsection (4), if an excavator damages an underground facility that is a jurisdictional pipeline, the civil penalty is the greater of $100 or three times the last civil penalty issued to the excavator, not to exceed $25,000.

(4) If the excavator is also the property owner, the penalties are half the amount established in subsections (2) and (3).

(5) (a) For the purposes of this section and subject to subsections (5)(b) and (5)(c), the last civil penalty is the dollar amount of the civil penalty that would have been issued to the excavator under this part based on incidents occurring in the lesser of:

(i) the last 100 requests for a locate made by the excavator; or

(ii) a rolling 12-month period based on the incident date.

(b) If an incident is subject to subsection (2), the civil penalty must be calculated as if all previous incidents were subject to subsection (2).

(c) If an incident is subject to subsection (3), the civil penalty must be calculated as if all previous incidents were subject to subsection (3).

History: **En. Sec. 5, Ch. 326, L. 2017.**

69-4-525. Underground facilities damage — underground facility owner civil penalties. (1) Except as provided in 69-4-529(3), within 14 days of receiving an incident report in accordance with subsection (2), the department shall issue a civil penalty in accordance with this section.

(2) If an incident is reported because a locate and mark was not properly completed or if the locate and marks provided were not reasonably accurate for locatable underground facilities, the underground facility owner shall be assessed a civil penalty in accordance with subsections (3) and (4).

(3) Except as provided in subsection (5), if the incident involves an underground facility that is not a jurisdictional pipeline, the civil penalty is the greater of $50 or twice the last civil penalty issued to the underground facility owner, not to exceed $10,000.

(4) Except as provided in subsection (5), if the incident involves an underground facility that is a jurisdictional pipeline, the civil penalty is the greater of $100 or three times the last civil penalty issued to the underground facility owner, not to exceed $25,000.

(5) If an underground facility owner is not a member of a notification center pursuant to 69-4-502(3), the penalties included in subsections (3) and (4) double.

(6) (a) For the purposes of this section and subject to subsections (6)(b) and (6)(c), the last civil penalty is the dollar amount of the civil penalty that would have been issued to the underground facility owner under this part based on incidents occurring in the lesser of:

(i) the last 100 outgoing locate requests made to the underground facility owner; or

(ii) a rolling 12-month period based on the incident date.

(b) If an incident is subject to subsection (3), the civil penalty must be calculated as if all previous incidents were subject to subsection (3).

(c) If an incident is subject to subsection (4), the civil penalty must be calculated as if all previous incidents were subject to subsection (4).

History: **En. Sec. 6, Ch. 326, L. 2017.**

69-4-526. Civil penalty — mediation — contested case hearing — procedures. (1) An excavator or underground facility owner who receives a civil penalty in accordance with 69-4-524 or 69-4-525 may request a review of the penalty in accordance with this section.

(2) (a) If an excavator or underground facility owner disputes a civil penalty, prior to a contested case the department, in consultation with the advisory council, shall conduct mediation of the disputed penalty in accordance with rules established by the department.

(b) The request must be filed within 20 days after the department issues a civil penalty.

(3) (a) If mediation in accordance with subsection (2) does not resolve the dispute, the request must proceed through the contested case process before the department pursuant to the Montana Administrative Procedure Act.

(b) The request must be filed within 20 days after the mediation report is mailed by the department.

(c) The department shall issue a final decision within 90 days from the close of the contested case.

(4) The department shall issue determinations in writing and provide a copy to all parties named in the dispute.

History: **En. Sec. 7, Ch. 326, L. 2017.**

69-4-527. Underground facility protection account — statutory appropriation. (1) There is an underground facility protection account in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department.

(2) There must be deposited in the account all revenue from:

(a) civil penalties collected pursuant to 69-4-524 and 69-4-525;

(b) fines collected pursuant to 69-4-529 or 69-4-530;

(c) fees collected pursuant to 69-4-502(4); and

(d) any gifts, grants, donations, or bequests to the department.

(3) Funds are allocated as follows:

(a) fees collected pursuant to 69-4-502(4) and paid by underground facility owners and any gifts, grants, donations, or bequests must be deposited in an account for the administration of this part by the department in accordance with this part; and

(b) all revenue from civil penalties collected pursuant to 69-4-524 and 69-4-525 and fines collected pursuant to 69-4-529 or 69-4-530 must be deposited in an account for distribution in the form of grants to notification centers to be used in accordance with 69-4-528.

(4) The accounts established in subsection (3) retain interest earned from the investment of money in the accounts.

History: En. Sec. 8, Ch. 326, L. 2017.

69-4-528. Notification center grants. (1) The department, in consultation with the council, shall award grants annually to notification centers using the account established pursuant to 69-4-527(3)(b). Beginning January 1, 2018, grants must be awarded to notification centers in accordance with this section and rules adopted by the department in accordance with 69-4-522.

(2) Grants must be awarded to notification centers to fund training and educational programs and materials for excavators, underground facility owners, and the general public.

(3) Nothing in this section prevents a notification center from:

(a) transferring grant money received to another entity for nonprofit underground facility education programs; or

(b) collaborating with another notification center on a joint grant application.

History: En. Sec. 9, Ch. 326, L. 2017.

69-4-529. Incident reports — notification of damage — fines. (1) (a) Within 30 days of an incident, an underground facility owner who owns an underground facility that is damaged shall:

(i) report the incident to the appropriate notification center; and

(ii) notify the excavator involved in the incident that the incident has been reported in accordance with subsection (1)(a)(i).

(b) A notification center that receives a report in accordance with subsection (1)(a) shall notify the department.

(2) When the information is available, the incident report must include:

(a) the name, address, and telephone number of the excavator responsible for the incident or the underground facility owner responsible for the damage;

(b) a description of the damage to the underground facility;

(c) a description of the incident, including whether it resulted in real or personal property damage, personal injury, or death;

(d) the name, address, and telephone number of any third party involved in the incident; and

(e) a description of any damage incurred by the excavator, including personal injury or death.

(3) After an incident is reported in accordance with subsection (1) and if the underground facility that is damaged is not a jurisdictional pipeline, if an underground facility owner determines that a civil penalty is not required, the underground facility owner shall provide notice of the determination to the department within 30 days of the date that the incident report was filed.

(4) (a) Except as provided in subsection (4)(b), the incident report must be available for public inquiry.

(b) The department may not make public any personal information protected by an individual privacy interest.

(5) If an underground facility owner fails to file an incident report in accordance with this section, the department shall assess a $100 fine.

(6) If an underground facility owner determines that damage to an underground facility that is not a jurisdictional pipeline is an event and not an incident, reporting and notification in accordance with subsection (1) is not required.

(7) An underground facility owner who receives a fine may contest the fine by requesting, within 20 days of the fine being levied, a hearing from the department.

(8) Beginning July 1, 2017, the department shall maintain a database of incident reports. Incident reports must be maintained for a minimum of 5 years.

History: En. Sec. 10, Ch. 326, L. 2017.

69-4-530. Collection of penalties, fines, and fees. (1) If the department is unable to collect civil penalties, fees, or fines assessed pursuant to this part, the department may transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The assistance costs charged the department by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) All money collected by the department of revenue is subject to the provisions of 17-4-106.

History: **En. Sec. 11, Ch. 326, L. 2017.**

Part 6
Movement of Structures

69-4-601. Movement of structures and interference with wires — notice required. No person, firm, or corporation moving, hauling, or transporting any house, building, derrick, or other structure shall cut, move, raise, or in any manner interfere with an electric light or electric power wire or poles or with telephone or telegraph wires, cables, messenger wires, guy wires, or poles without giving notice to the owner or agent of said wires or poles, as hereinafter provided.

History: **En. Sec. 1, Ch. 55, L. 1929; re-en. Sec. 2711.1, R.C.M. 1935; amd. Sec. 1, Ch. 174, L. 1937; amd. Sec. 14, Ch. 137, L. 1941; R.C.M. 1947, 24-136.**

69-4-602. Notice of move — cost estimate. (1) The person, firm, or corporation moving a house, building, derrick, or other structure shall give the person, firm, or corporation owning or controlling the wires, cables, or poles affected by the movement of a structure, at both the person's, firm's, or corporation's principal office and nearest office within the state, not less than 10 days' written notice of the proposed time and place of moving a structure.

(2) The owner of the wires, cables, or poles shall give the mover a written estimate of the total cost of all work related to cutting or raising the wires or cables or moving the poles, including travel time, at least 3 days prior to the move or within 10 days after receipt of the written notice of the move, whichever time comes sooner.

(3) The estimate of the total cost required under this section must be developed in accordance with the cost schedule filed as provided in subsection (4).

(4) A public utility, cable television company, or unregulated telecommunications provider with wires, cables, or poles in Montana shall file with the commission, by April 1 of each year, an application for approval of a cost schedule for labor and equipment for all work related to cutting or raising wires or cables or moving poles. The cost schedule is effective on a temporary basis, subject to a rebate and a surcharge as provided in 69-3-304, 30 days after the filing of a cost schedule and pending a final order of the commission, unless the commission first determines that the cost schedule is above cost.

History: **En. Sec. 2, Ch. 55, L. 1929; re-en. Sec. 2711.2, R.C.M. 1935; R.C.M. 1947, 24-137; amd. Sec. 1, Ch. 442, L. 1983; amd. Sec. 1, Ch. 359, L. 2003.**

69-4-603. Procedure to accomplish move — payment of cost. (1) In order to accomplish moving a house, building, derrick, or other structure through an area in which wires, cables, or poles impede the movement, the person, firm, or corporation who owns or controls the wires, cables, or poles and who has received the notice required by 69-4-602 shall furnish competent workers to raise or cut the wires or cables or move the poles as necessary to facilitate moving the house, building, derrick, or other structure.

(2) (a) Except as provided in subsection (2)(b), the necessary and actual costs of raising or cutting wires or cables or moving poles to facilitate the movement of a house, building, derrick, other structure, or prefabricated structure that is intended to be moved from the place of fabrication, storage facility, or dealer's lot, determined in accordance with the schedule filed under 69-4-602, must be paid by the mover.

(b) The necessary and actual costs of raising or cutting wires or cables or moving poles to facilitate the movement of a structure, determined in accordance with the schedule filed under 69-4-602, must be shared equally by the mover and the owner of the wires, cables, or poles if the structure is owned by a person for occupancy or use by that person.

(3) A mover may not raise, cut, or in any way interfere with wires, cables, or poles unless the person, firm, or corporation who owns or controls the wires, cables, or poles refuses, after having been notified as required by 69-4-602, to raise or cut the wires or cables or move the poles.

(4) The mover shall make a prepayment of a portion of the total cost estimated under 69-4-602 in advance of the move as follows:

(a) if the structure is moved through or out of the service territory of the owner of the wires, cables, or poles, 100% of the mover's share pursuant to subsection (2); or

(b) if the structure is delivered to a place within the service territory of the owner of the wires, cables, or poles, 50% of the mover's share pursuant to subsection (2).

(5) The owner of the wires, cables, or poles may waive the prepayment requirement or accept a bond or other financial instrument in lieu of payment.

(6) The mover shall pay the mover's share of all actual costs under subsection (2) in excess of any prepayment made under subsection (4) within 30 days of the move.

(7) If the prepayment made under subsection (4) exceeds the mover's share of actual costs under subsection (2), the owner of the wires, cables, or poles shall refund the difference to the mover within 30 days of the move.

History: En. Sec. 3, Ch. 55, L. 1929; re-en. Sec. 2711.3, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1951; R.C.M. 1947, 24-138; amd. Sec. 2, Ch. 442, L. 1983; amd. Sec. 1, Ch. 551, L. 1995; amd. Sec. 2, Ch. 359, L. 2003.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-4-604. Unlawful interference with lines. It shall be unlawful for any person, firm, or corporation engaged as principal or employee in moving any house, building, derrick, or other structure, as provided in this part, to move, touch, cut, molest, or in any way interfere with any electric light, electric power, telephone, or telegraph wires, cables, messenger wires, or guy wires or any poles bearing any such wires, except in compliance with the provisions of this part.

History: En. Sec. 4, Ch. 55, L. 1929; re-en. Sec. 2711.4, R.C.M. 1935; amd. Sec. 2, Ch. 174, L. 1937; amd. Sec. 15, Ch. 137, L. 1941; R.C.M. 1947, 24-139.

Cross-References

Misdemeanor — penalty when none specified, 46-18-212.

Parts 7 through 9 reserved

Part 10
Requirements for Use of Advanced Metering Devices

69-4-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Advanced metering gateway device" means any electric utility meter component or device ancillary to the electric utility meter that is located at an end-user's residence or business and is equipped and programmed to communicate with electrical appliances, electrical equipment, or electrical devices within the end-user's residence or business or that is capable of estimating and recording electrical energy usage by types of appliances, electrical equipment, or electrical devices.

(2) "Advanced metering device" or "advanced meter" means a meter or metering device that is owned or leased by a utility or the utility's agent and that:

(a) measures, records, or sends a customer's utility usage or other data by use of radio waves or internet technology; and

(b) allows for two-way communication between the meter and the utility or its agent.

(3) "Utility" means a public utility regulated by the public service commission pursuant to Title 69, chapter 3.

History: En. Sec. 1, Ch. 179, L. 2019; amd. Sec. 2, Ch. 546, L. 2021.

69-4-1002. Meter security — data disclosure. (1) Except as provided in subsections (3) and (4), a customer's energy use data is private and confidential and may not be disclosed by a utility, except as specifically required in subsection (3) or (4) or otherwise provided by law.

(2) Energy use data from an advanced metering device must be sufficiently secured so that the data cannot be intercepted by a person other than a utility.

(3) A utility may disclose aggregated energy use data that is anonymous.

(4) A utility shall make energy use data collected from an advanced metering device available to a customer or to a customer's designee upon request of the customer.

History: En. Sec. 2, Ch. 179, L. 2019.

69-4-1003. Advanced metering devices — notice required. (1) A utility shall:

(a) notify a customer in writing at least 60 days prior to installation of an advanced metering device at the customer's address; and

(b) provide a sample copy of the notice to the public service commission and a list of customers who have been provided notice.

(2) The notice provided in accordance with subsection (1) must:

(a) be sent by first-class mail to a customer's address and be separate from any billing mailing;

(b) clearly state the utility's intent to install an advanced metering device; and

(c) if determined to be a requirement by the public service commission, include the process and financial obligations for a customer to opt out of installation of an advanced metering device.

History: En. Sec. 3, Ch. 179, L. 2019.

69-4-1004. Opt-out program — public service commission responsibilities — rulemaking. (1) On or before July 1, 2022, the public service commission shall determine whether an opt-out program for advanced meters or advanced metering gateway devices, or both, should be established.

(2) In determining whether to establish an opt-out program, the commission shall consider:

(a) an individual customer's privacy interest;

(b) costs and practicality of allowing customers to opt out;

(c) availability of other technology; and

(d) other concerns related to advanced metering devices and advanced metering gateway devices.

(3) If the commission determines an opt-out program should be established, the commission shall adopt rules providing options and requirements for individual customers to opt out of advanced metering device or advanced metering gateway device installation.

History: En. Sec. 4, Ch. 179, L. 2019; amd. Sec. 3, Ch. 546, L. 2021.

69-4-1005. Advanced metering gateway device opt-in provisions — rulemaking. (1) A utility may allow customers to opt-in to the installation of all advanced metering gateway devices located at an end user's residence or business.

(2) A utility may charge customers who opt in to advanced metering gateway device installation additional fees or charges related to the installation.

(3) If the commission determines an opt in program should be established, the commission shall adopt rules providing options, requirements, and a process for determination of fees or charges for individual customers to opt in to advanced metering gateway device installation.

(4) Utilities seeking to allow an advanced metering gateway device opt-in program shall file a report detailing the program requirements and process for determining fees or charges with the commission along with a $25 filing fee.

History: En. Sec. 1, Ch. 546, L. 2021.

Part 11
Liability for Bypassing or Tampering With Meter

Part Cross-References

Theft of services, 45-6-305.

Obtaining communication services with intent to defraud, 45-6-306.

69-4-1101. Purpose — remedies cumulative. It is the purpose of this part to impose a substantial civil penalty upon those persons who, at the cost of their fellow citizens, obtain utility services at less than their true value through bypassing or tampering as defined in 69-4-1102. This part does not supersede or replace other remedies provided for in law or equity.

History: En. Sec. 1, Ch. 678, L. 1985.

69-4-1102. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Bypassing" means any act, using any means, the purpose of which is to obtain utility service without having such service pass through the authorized meter provided for measuring or registering such service.

(2) "Person" means an individual, firm, partnership, corporation, unincorporated association, or other legal or business entity or the executor, administrator, trustee, receiver, assignee, or personal representative thereof.

(3) "Tampering" means damaging, altering, adjusting, or in any manner interfering with or obstructing the operation or function of any authorized metering device provided for measuring or registering utility service.

(4) "Utility" means any public utility, municipally owned utility, or cooperative utility that provides electricity, gas, water, sewage disposal, or combination thereof, for sale to consumers.

(5) "Utility service" means the provision of electricity, gas, water, or sewer service.

History: **En. Sec. 2, Ch. 678, L. 1985.**

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-4-1103. Liability for bypass or tampering. (1) A person who bypasses or tampers, either for the person's own benefit or the benefit of another, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (2) precludes collection under this subsection.

(2) A person who receives utility services, knowing that the measurement of the services is being affected by bypassing or tampering, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (1) precludes collection under this subsection.

History: **En. Sec. 3, Ch. 678, L. 1985; amd. Sec. 1996, Ch. 56, L. 2009.**

69-4-1104. Action for recovery of reasonable value — penalty. A utility may institute a civil action against a person described in 69-4-1103 to recover the reasonable value of the services actually provided to the person. Upon a finding that such person is liable to the utility, the court may enter judgment against the person for up to three times the reasonable value of the utility's services actually provided and may award to the prevailing party its costs, including reasonable attorney fees, incurred in the action and the costs, including expert witness fees, of presenting such expert testimony as is reasonably necessary.

History: **En. Sec. 4, Ch. 678, L. 1985.**

Cross-References

Costs, Title 25, ch. 10.

CHAPTER 5
POWER AND ENERGY COMPANIES

Part 1 — Territorial Integrity for Electric Suppliers

69-5-101. Short title.
69-5-102. Definitions.
69-5-103. Repealed.
69-5-104. Supply service prohibited — continuation of electric service facilities to existing consumers.
69-5-105. Service to new consumers.
69-5-106. Electric service facilities to large customers.
69-5-107. Customer-owned facilities.
69-5-108. Agreements between electric facilities providers.
69-5-109. Special provisions for annexed areas.
69-5-110. Jurisdiction of district courts over disputes.
69-5-111. Judicial remedies.
69-5-112. Commission jurisdiction over agreements.
69-5-113. Service to new subdivisions.
69-5-114. Review by independent consultant.
69-5-115 through 69-5-120 reserved.
69-5-121. Definitions.
69-5-122. Residential utility line extension — refund.
69-5-123. Review and selection of contractor.

Part 2 — Incumbent Electric Utility Transmission Line Rights

69-5-201. Definitions.
69-5-202. Incumbent electric utility transmission line rights.

Chapter Cross-References

Energy source restrictions — prohibitions, 7-1-117.
Assessment of public utilities, 15-8-406, 15-23-101.
Assessment of railroads and other franchises, 15-8-407.
Exemption from corporate taxes, 15-31-102.
Relocation of utilities' facilities, 60-4-402.

Part 1
Territorial Integrity for Electric Suppliers

69-5-101. Short title. This part is known and may be cited as the "Territorial Integrity Act".

History: En. Sec. 1, Ch. 7, L. 1971; R.C.M. 1947, 70-501; amd. Sec. 34, Ch. 505, L. 1997.

69-5-102. Definitions. When used in this part, the following definitions apply:

(1) "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Cost" means the gross cost of constructing new electric service facilities to the premises, using new materials and similar design standards required to meet the load, from a point where there is existing electrical capacity to serve.

(3) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer that are controlled or operated by a distribution utility.

(4) "Distribution service" means the function of delivering electricity to the public by a distribution utility.

(5) "Distribution utility" means a utility owning distribution facilities for distribution of electricity to the public.

(6) "Electric facilities provider" means any utility that provides electric service facilities to the public.

(7) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

(8) "Electricity supplier" means any person, corporation, or governmental entity that:

(a) sells electricity to customers at retail rates in the state; and

(b) is not a public utility or a cooperative.

(9) "Electricity supply service" means the provision of electricity supply and related services through power purchase agreements, the acquisition and operation of electrical generation facilities, demand side management, and energy efficiency programs.

(10) "Large customer" means any premises, except subdivisions, with the estimated connected load for full operation at an individual service for the premises of 500 kilowatts or larger.

(11) "Line" means any material that is used to convey electrical energy and that is normally energized between 2,400 volts phase to ground and 14,400 volts phase to ground.

(12) "Premises" means a building, residence, structure, irrigation pump, or facility to which electric service facilities are provided or are to be installed. However, two or more buildings, structures, irrigation pumps, or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, irrigation pump, or facility, other than a trailer court, may not, together with any other building, structure, irrigation pump, or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, irrigation pump, or facility.

(13) "Regulated utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(14) "Service territory" means premises receiving distribution service from a utility on January 1, 2011, and premises added pursuant to Title 69, chapter 5.

(15) "Subdivision" has the meaning provided for in 76-3-103. The definition includes subdivisions that may be developed in one or more phases of development at different periods of time.

(16) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18, or their successors or assignees.

(17) "Vector" means a straight line between two points.

History: En. Sec. 2, Ch. 7, L. 1971; amd. Sec. 1, Ch. 68, L. 1975; R.C.M. 1947, 70-502; amd. Sec. 35, Ch. 505, L. 1997; amd. Sec. 1, Ch. 231, L. 2007; amd. Sec. 2, Ch. 120, L. 2011.

Cross-References

Rural electric and telephone cooperatives defined, 35-18-102.

69-5-103. Repealed. Sec. 46, Ch. 505, L. 1997.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(part).

69-5-104. Supply service prohibited — continuation of electric service facilities to existing consumers. (1) Except as provided in subsection (2), a utility may not provide electricity supply service to premises in another utility's service territory. An electricity supplier may provide electricity supply service in the service territory of a public utility as provided in 69-8-411.

(2) Each electric facilities provider has the right to provide electric service facilities to all premises being served by it or to which any of its facilities are attached on May 2, 1997.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(1); amd. Sec. 36, Ch. 505, L. 1997; amd. Sec. 34, Ch. 19, L. 2011; (1)En. Sec. 1, Ch. 120, L. 2011.

69-5-105. Service to new consumers. (1) Except as provided in 69-5-106 and 69-5-113, the electric facilities provider that has a line nearest the premises and that has the capacity to serve the premises, as measured in accordance with subsection (2), shall provide electric service facilities to the premises initially requiring service after May 2, 1997.

(2) All measurements under this part must be made on the shortest vector that can be drawn from the line nearest the premises to the nearest permanent portion of the premises.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(2); amd. Sec. 37, Ch. 505, L. 1997; amd. Sec. 2, Ch. 231, L. 2007.

69-5-106. Electric service facilities to large customers. A regulated utility electric facilities provider has the right to furnish electric service facilities to the premises of a large customer if the regulated utility electric facilities provider can extend its electric service facilities to the premises of a large customer at less cost than other electric facilities providers. The estimated connected load must be determined from the plans and specifications prepared for construction of the premises or, if an estimate is not available, must be determined by mutual agreement of the electric facilities provider and the large customer.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(3); amd. Sec. 12, Ch. 43, L. 1979; amd. Sec. 38, Ch. 505, L. 1997; amd. Sec. 3, Ch. 231, L. 2007.

69-5-107. Customer-owned facilities. This part may not limit a customer's right to construct, own, or operate electric service facilities for the customer's own use, and construction, ownership, or use may not cause the customer to be considered a utility. A customer may not duplicate existing electric service facilities.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(4); amd. Sec. 39, Ch. 505, L. 1997.

69-5-108. Agreements between electric facilities providers. Utilities may enter into agreements that identify the geographical area to be exclusively served by each electric facilities provider that is party to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and all customers, except those provided for in 69-5-106.

History: En. Sec. 4, Ch. 7, L. 1971; R.C.M. 1947, 70-504; amd. Sec. 1, Ch. 167, L. 1995; amd. Sec. 40, Ch. 505, L. 1997.

69-5-109. Special provisions for annexed areas. (1) Electric facilities providers providing electric service facilities in or near areas that are incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since 1985 or having existing municipal planning zones on May 2, 1997, shall enter into agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit the agreements to the commission for approval, pursuant to this part.

(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater. Agreements must be based on the location of facilities in place on May 2, 1997.

(3) If electric facilities providers have failed to negotiate agreements within 1 year from May 2, 1997, the commission shall divide the annexed and planning zone areas into exclusive service territories, using the considerations pursuant to 69-5-112.

(4) Until agreements are final, electric service facilities to new customers will be provided pursuant to 69-5-105.

History: En. Sec. 5, Ch. 7, L. 1971; R.C.M. 1947, 70-505; amd. Sec. 13, Ch. 43, L. 1979; amd. Sec. 41, Ch. 505, L. 1997.

Cross-References

Annexation, Title 7, ch. 2, parts 42 through 47.

69-5-110. Jurisdiction of district courts over disputes. The district courts of the county or counties within which the premises, vectors, or lines involved in any dispute are located have jurisdiction under this part over all electric facilities providers subject to this part.

History: En. Sec. 6, Ch. 7, L. 1971; R.C.M. 1947, 70-506; amd. Sec. 42, Ch. 505, L. 1997; amd. Sec. 4, Ch. 231, L. 2007.

69-5-111. Judicial remedies. (1) Whenever an electric facilities provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, the electric facilities provider affected may file a complaint in the district court setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist that an electric facilities provider is in violation of this part is filed with the complaint, a temporary restraining order must be issued without notice. A copy of the temporary restraining order, complaint, and affidavit must be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified in the order and may not be more than 10 days after service of the order and must take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temporary restraining order that was issued and dismissing the complaint must be made before 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within 20 days after filing the notice of appeal and must take precedence over all matters pending before the supreme court of Montana.

History: En. Sec. 7, Ch. 7, L. 1971; R.C.M. 1947, 70-507; amd. Sec. 43, Ch. 505, L. 1997.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Preliminary injunctions, Title 27, ch. 19, parts 2 through 4.

69-5-112. Commission jurisdiction over agreements. (1) All agreements between electric facilities providers must be submitted to the commission for approval. Each agreement must clearly identify the geographical area to be served by each electric facilities provider. The submission must include:

(a) a map and a written description of the area; and

(b) the terms and conditions pertaining to the implementation of the agreement.

(2) Whenever an agreement involves the exchange or transfer of customers within service territories, the following must also be included with the agreement submission:

(a) the number and class of customers to be transferred;

(b) assurance that the affected customers have been contacted and have received a written explanation of the difference in rates; and

(c) information with respect to the degree of acceptance by affected customers, such as the number in favor of and those opposed to the transfer.

(3) In approving agreements, the commission shall consider but is not limited to consideration of:

(a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electric service to the existing or future ratepayers of any electric facilities provider party of the agreement; and

(b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic duplication of electric service facilities.

(4) An agreement approved by the commission is valid and enforceable, and except as provided in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into an exclusive territory.

(5) The commission shall state its findings and conclusions for approving or disapproving an agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities providers submitting the agreement to the commission shall act according to the agreement until a decision is rendered.

(6) Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by the commission.

(7) The commission may promulgate rules to administer this part consistent with the requirements of this part.

History: En. Sec. 44, Ch. 505, L. 1997.

Cross-References

Adoption and Publication of Rules, Title 2, ch. 4, part 3.

General powers and rulemaking authority of Commission, 69-3-103.

69-5-113. Service to new subdivisions. (1) Except as provided in 69-5-108, if two or more electric facilities providers have lines in general proximity to a new subdivision, electric service to the new subdivision must be apportioned by drawing a series of vectors through the subdivision equidistant from the lines of each electric facilities provider with that part of the subdivision closest to an electric facilities provider's line receiving service from that electric facilities provider.

(2) Nothing in this section prohibits electric facilities providers from agreeing among themselves on how to provide service to a new subdivision.

History: En. Sec. 5, Ch. 231, L. 2007.

69-5-114. Review by independent consultant. (1) If electric facilities providers that have provided cost estimates to a new large customer are unable to reach agreement as to which electric facilities provider can provide electric service facilities at the least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its line to the new large customer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved.

(2) If electric facilities providers proposing to provide service to a subdivision do not agree on the location of a vector, as provided in 69-5-113(1), an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine the location of a vector. The cost of those engineering services must be paid equally by the electric facilities providers involved.

(3) If electric facilities providers having lines near the premises of a new consumer do not agree if a line has capacity to serve the premises, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine if a line has capacity to serve the premises. The cost of those engineering services must be paid equally by the electric facilities providers involved.

History: En. Sec. 6, Ch. 231, L. 2007.

69-5-115 through 69-5-120 reserved.

69-5-121. Definitions. As used in 69-5-122, 69-5-123, and this section, the following definitions apply:

(1) "Added structure" means any outbuildings, improvements, irrigation pumps, facilities, or other structures located on a small customer's property.

(2) "Commercial structure" means a building used for commercial purposes.

(3) "Contractor" means a person who submits a proposal to construct or enters into a contract to construct an extension and who is licensed, insured, a member of the national electrical contractors association, and experienced in comparable construction.

(4) "Electric utility" means:

(a) a public utility regulated by the public service commission pursuant to Title 69, chapter 3, that provides electrical service for heat, light, or power to a small customer; or

(b) a utility qualifying as a rural electric cooperative pursuant to Title 35, chapter 18, that provides electrical service for heat, light, or power to a small customer.

(5) "Extension" means any works or improvements necessary to connect a residential, commercial, or added structure of a small customer to an electric utility's distribution or transmission system.

(6) "Residential structure" means a single-family house, trailer, manufactured home, or mobile home, excluding any outbuildings, improvements, irrigation pumps, facilities, or other structures located on the property.

(7) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

History: En. Sec. 1, Ch. 248, L. 2011; amd. Sec. 2, Ch. 440, L. 2017; amd. Sec. 1, Ch. 542, L. 2021.

69-5-122. Residential utility line extension — refund. (1) A small customer of an electric utility as defined in 69-5-121(4)(a) who pays for a portion of the construction of an extension to a residential structure or who advances money to an electric utility as defined in 69-5-121(4)(a) for a subsequent connection to that extension must receive a refund as provided in subsection (2) if an additional customer connects to the extension.

(2) Each additional customer, prior to the initiation of electric service, shall advance to an electric utility as defined in 69-5-121(4)(a) an equal proportionate share of the total amount paid for the extension to a residential structure. The electric utility shall refund the advance on a pro rata basis to the small customer who paid for the initial extension or to the small customer who paid for a subsequent connection to that extension. A refund may not be issued after 10 years from the date the initial extension is established.

(3) A small customer who expends funds for an extension to a residential structure may not receive a refund that is greater than the amount necessary to return the small customer to the small customer's proportionate share of the cost of the original extension.

(4) A small customer may receive a refund pursuant to this section only if:

(a) the small customer paid for the initial extension or subsequent connection to the extension pursuant to subsection (1);

(b) at the time the refund is issued, the small customer owns the residential structure to which the extension or subsequent connection to the extension was made; and

(c) the small customer did not hire a contractor to complete the extension pursuant to 69-5-123.

History: En. Sec. 2, Ch. 248, L. 2011; amd. Sec. 3, Ch. 440, L. 2017.

69-5-123. Review and selection of contractor. (1) (a) After an electric utility provides a cost estimate to a small customer for an extension on the small customer's property to a residential, commercial, or added structure, the small customer may request a contractor to provide an alternative cost estimate.

(b) If the small customer requesting an alternative cost estimate is served by an electric utility as defined in 69-5-121(4)(a), the small customer shall pay a $25 fee to the public service commission and file a copy of the cost estimate and alternative cost estimate with the commission.

(2) (a) Subject to subsection (2)(b), after receiving an alternative cost estimate, the small customer may hire the contractor to complete the extension on the small customer's property to the residential, commercial, or added structure.

(b) At least 20 days prior to the contractor beginning work on the extension, the small customer shall notify the electric utility that will be providing service to the small customer. The notification must be in writing.

(3) (a) Subject to subsections (3)(b) through (3)(d), if a contractor is selected, the extension must be built on the small customer's property to meet the same standards proposed by the electric utility that will be providing service to the small customer.

(b) Throughout construction and as the electric utility considers appropriate, the electric utility shall inspect the extension and be onsite. The contractor shall notify the electric utility of construction progress as needed for inspection.

(c) If a contractor is selected, the contract for an extension must require the payment of the standard prevailing wage rate in effect and applicable to the work being performed.

(d) Either the contractor selected in accordance with subsection (3)(a) or the person selected by the electric utility completing inspections onsite in accordance with subsection (3)(b) must be a journeyman lineman or professional engineer.

(4) (a) When the extension is completed by the contractor, the electric utility that will be providing service to the small customer shall complete a final inspection. After the final inspection and following the correction of deficiencies, if any, the electric utility shall provide the small customer a written statement that construction is complete.

(b) After the written statement is issued in accordance with subsection (4)(a), the electric utility shall connect the extension to the electric utility's system.

(5) Construction and completion of an extension by a contractor does not:

(a) affect the location of a vector, a capacity decision, or any other agreement made in accordance with 69-5-101 through 69-5-114;

(b) allow the contractor to connect an extension to an electric utility without the electric utility's written statement and final inspection in accordance with subsection (4); or

(c) affect the rights and duties of a rural electric cooperative organized in accordance with Title 35, chapter 18, to adopt policies or to implement the provisions of this section.

(6) (a) If a contractor is hired in accordance with this section, the cost of engineering, construction, and other services must be paid by the small customer who sought the alternative cost estimate and hired the contractor.

(b) The small customer is also responsible for costs incurred by an electric utility while onsite during construction and inspections in accordance with subsections (3) and (4).

(7) If a contractor is hired in accordance with this section, when construction is complete the customer and the electric utility may negotiate ownership and maintenance of the extension.

History: En. Sec. 1, Ch. 440, L. 2017; amd. Sec. 32, Ch. 3, L. 2019.

Part 2
Incumbent Electric Utility Transmission Line Rights

69-5-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Electric transmission line" means a line, substation, or associated equipment used to convey electrical energy connected to transmission facilities that is energized at 115 kilovolts or more phase to phase.

(b) The term does not include an electric transmission line used solely to connect an energy generation facility to transmission facilities owned by an incumbent electric utility.

(2) "Federally registered planning authority" means a regional transmission organization responsible for moving electricity, planning for the movement of electricity, or both over large interstate areas registered with the federal energy regulatory commission.

(3) (a) "Incumbent electric utility" means a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18, or their successors or assignees, that owned, controlled, or operated transmission facilities on or before January 1, 2017.

(b) The term does not include a public utility regulated by the public service commission pursuant to Title 69, chapter 3.

(4) "Transmission facilities" means facilities that are used to provide transmission services and are owned, controlled, or operated by an incumbent electric utility.

History: **En. Sec. 1, Ch. 161, L. 2017; amd. Sec. 1, Ch. 389, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 389, L. 2025. Amendment effective October 1, 2025.

69-5-202. Incumbent electric utility transmission line rights. (1) (a) Except as provided in subsection (1)(b), an incumbent electric utility has the right to construct through a competitive bidding process, own, and maintain an electric transmission line on or after January 1, 2017:

(i) located in an area included in the midwest reliability organization;

(ii) approved for construction by a federally registered planning authority; and

(iii) planned to interconnect with an incumbent electric utility's transmission facilities.

(b) An incumbent electric utility may waive its right to construct, in accordance with subsection (3)(a), own, and maintain an electric transmission line by providing notice to the federally registered planning authority.

(2) If an incumbent electric utility intends to construct, own, and maintain an electric transmission line in accordance with subsection (1)(a), the incumbent electric utility shall provide notice to the federally registered planning authority as designated within the authority's established open-access transmission tariff timelines.

(3) (a) A competitive bidding process must be conducted by the incumbent electric utility for the construction of a new electric transmission line project that has a valuation of $8 million or more. The incumbent electric utility may participate in the bidding process as the incumbent electric utility, including affiliates, successors, and assignees.

(b) The bidding process must adhere to the incumbent electric utility's reasonable timelines, specifications, and standards for design, construction, and materials.

(c) If the incumbent electric utility awards a bid to an entity that is not the incumbent electric utility, the incumbent electric utility may perform inspections throughout the construction period to ensure adherence to its timelines, specifications, and standards.

(d) On completion of construction of an electric transmission line, the incumbent electric utility has the right to own and shall assume maintenance responsibility of the electric transmission line.

(4) If an electric transmission line constructed, owned, and maintained in accordance with subsection (1)(a) is connected between two separate incumbent electric utilities, the electric transmission line must be shared equally between the incumbent utilities, unless the incumbent utilities agree to different terms and conditions.

(5) Nothing in this section may be construed to limit, alter, or modify the authority of the commission to make findings relative to 69-3-109 and 69-3-201 as they relate to transmission facilities or to regulate utilities subject to Title 69, chapter 3.

History: **En. Sec. 2, Ch. 161, L. 2017; amd. Sec. 2, Ch. 389, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 389, L. 2025. Amendment effective October 1, 2025.

CHAPTER 6

COMMUNICATION UTILITIES

Part 1 — General Provisions

69-6-101. Repealed.
69-6-102. Repealed.
69-6-103. Repealed.
69-6-104. Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials.

Chapter Cross-References

Violation of privacy in communications, 45-8-213.

Part 1
General Provisions

69-6-101. Repealed. Sec. 38, Ch. 349, L. 1997.

History: En. Sec. 1001, Civ. C. 1895; re-en. Sec. 4401, Rev. C. 1907; re-en. Sec. 6646, R.C.M. 1921; re-en. Sec. 6646, R.C.M. 1935; R.C.M. 1947, 70-302.

69-6-102. Repealed. Sec. 38, Ch. 349, L. 1997.

History: En. Sec. 1002, Civ. C. 1895; re-en. Sec. 4402, Rev. C. 1907; re-en. Sec. 6647, R.C.M. 1921; re-en. Sec. 6647, R.C.M. 1935; R.C.M. 1947, 70-303.

69-6-103. Repealed. Sec. 38, Ch. 349, L. 1997.

History: (1)En. Sec. 1, Ch. 182, L. 1907; Sec. 4340, Rev. C. 1907; re-en. Sec. 6579, R.C.M. 1921; re-en. Sec. 6579, R.C.M. 1935; Sec. 72-624, R.C.M. 1947; (2)En. Sec. 2, Ch. 182, L. 1907; Sec. 4341, Rev. C. 1907; re-en. Sec. 6580, R.C.M. 1921; re-en. Sec. 6580, R.C.M. 1935; Sec. 72-625, R.C.M. 1947; (3)En. Sec. 3, Ch. 182, L. 1907; Sec. 4342, Rev. C. 1907; re-en. Sec. 6581, R.C.M. 1921; re-en. Sec. 6581, R.C.M. 1935; Sec. 72-626, R.C.M. 1947; R.C.M. 1947, 72-624, 72-625, 72-626.

69-6-104. Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials. A supervisory law enforcement official who has jurisdiction in a geographical area where hostages are being held and who has probable cause to believe that the holder of the hostages is committing a crime may order a previously designated telephone security employee or other telephone company official to arrange to cut, reroute, or divert telephone lines in order to prevent the holder of the hostages from communicating with any person other than a law enforcement officer or an individual authorized by a law enforcement officer. The serving telephone company within the geographical area of a law enforcement agency shall designate a telephone company security employee or other telephone company official and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section. A telephone security employee or other telephone company official acting in good faith under an order given pursuant to this section does not commit the offense of violating privacy in communications and is not liable in any civil action brought as a result of such good faith actions.

History: En. Sec. 2, Ch. 356, L. 1979.

Cross-References

Aggravated kidnapping, 45-5-303.
Privacy in communications, 45-8-213.

CHAPTER 7
MUNICIPAL UTILITIES

Part 1 — Regulation of Rates by Municipality

69-7-101. Municipal utilities — regulation by municipality.
69-7-102. Repealed.
69-7-103 through 69-7-110 reserved.
69-7-111. Municipal rate hearing required — notice.
69-7-112. Conduct of municipal rate hearing.
69-7-113. Appeals.
69-7-114 through 69-7-120 reserved.
69-7-121. Repealed.

Part 2 — Operation of Utilities

69-7-201. Rules for operation of municipal utility.

Chapter Cross-References

Grant of franchise to public utility by city, 7-3-4222, 7-3-4223.
Officer or employee of city not to be interested in contract with public utility, 7-3-4256.
Cities under commission-manager plan — power to own and regulate public utilities, 7-3-4313.
Ordinances and franchises concerning public utilities not emergency measures, 7-3-4325, 7-3-4326.
Renewal of grant for construction of public utility, 7-3-4450.
Destruction of public records relating to utilities, 7-5-4124.
Metropolitan sanitary district ratemaking, 7-13-144.
General provisions related to county utility services, Title 7, ch. 13, part 21.
County water and sewer districts, Title 7, ch. 13, parts 22 and 23.
Municipal utility services — general provisions, Title 7, ch. 13, part 41.

Public sewer systems, Title 7, ch. 13, part 42.
Municipal sewage and water systems, Title 7, ch. 13, part 43.
Authorization of cities and towns to furnish water and sewer services, 7-13-4311, 7-13-4312.
Illegal use of water or sewer system, 7-13-4313.
Local government water supply and regulation, Title 7, ch. 13, part 44.
Prohibited contributions to candidates from corporations, 13-35-227.
Assessment of public utilities, 15-8-406, 15-23-101.
Assessment of railroads and other franchises, 15-8-407.
Report of property by utilities to Department of Revenue, 15-23-301.
Retail telecommunications excise tax, Title 15, ch. 53.
Permissible easements for utilities, 76-6-203.

Part 1
Regulation of Rates by Municipality

69-7-101. Municipal utilities — regulation by municipality. A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications must be reasonable and just.

History: En. Sec. 1, Ch. 607, L. 1981; amd. Secs. 4, 8, Ch. 588, L. 1983; amd. Sec. 1, Ch. 288, L. 1995.

Cross-References

Public bond issues, Title 17, ch. 5.

69-7-102. Repealed. Sec. 2, Ch. 288, L. 1995.

History: En. Sec. 5, Ch. 607, L. 1981; amd. Secs. 4, 9, Ch. 588, L. 1983.

69-7-103 through 69-7-110 reserved.

69-7-111. Municipal rate hearing required — notice. (1) Except as provided in 75-5-516, 75-6-108, and subsection (6), if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing must be published in a newspaper as provided in 7-1-4127.

(3) The notice must be:

(a) published for a time period in accordance with 7-1-4127(7)(b); and

(b) mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The mailed notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

(6) (a) If the proposed increase in the rates, fees, or charges imposed by the municipality is the result of the establishment of or change in rates, fees, or charges imposed by a regional authority of which the municipality is a customer and the authority is required to hold a public hearing pursuant to 75-6-326, the governing body of the municipality shall:

(i) mail notice of the public hearing to be held by the authority to all persons served by the municipality at least 15 days before the public hearing; and

(ii) provide notification to all persons served by the municipality at least 10 days prior to the enactment of the ordinance or adoption of the resolution implementing the increase.

(b) The municipality is not required to hold a public hearing in connection with the increase.

(7) If a regional authority is not required to hold a public hearing as provided in 75-6-326(9), the municipality is subject to the hearing requirements of this section.

History: En. Sec. 2, Ch. 607, L. 1981; amd. Secs. 4, 10, Ch. 588, L. 1983; amd. Sec. 10, Ch. 645, L. 1991; amd. Sec. 3, Ch. 507, L. 1993; amd. Sec. 4, Ch. 187, L. 2013; amd. Sec. 7, Ch. 272, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 272, L. 2025. Amendment effective October 1, 2025.

Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2; Title 69, ch. 1, part 2.
Investigatory powers of Consumer Counsel, 69-2-203.

69-7-112. Conduct of municipal rate hearing. (1) At the hearing, all persons, associations, corporations, or companies affected or interested, including the Montana consumer counsel, may be present and represented by counsel. The hearing may be continued from time to time by the governing body of the municipality. At the conclusion of the hearing, all interested parties must be allowed to make arguments that they may consider proper.

(2) Within 30 days after the hearing, the governing body of the municipality shall issue its decision. The decision is final 10 days after being filed with the municipal clerk.

History: En. Sec. 3, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983; amd. Sec. 10, Ch. 342, L. 2009.

Cross-References

Office of municipal clerk, Title 7, ch. 4, part 45.

69-7-113. Appeals. (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies.

(2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies.

History: En. Sec. 7, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Venue, Title 25, ch. 2.

69-7-114 through 69-7-120 reserved.

69-7-121. Repealed. Sec. 2, Ch. 288, L. 1995.

History: En. Sec. 4, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Part 2
Operation of Utilities

69-7-201. Rules for operation of municipal utility. Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. They shall define or provide for use of meter or flat-rate user charges, the classification of users, applications for service, and uses of the service. The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this chapter.

History: En. Sec. 6, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act — inapplicable to local governments, 2-4-102.
General provisions related to municipal utility services, Title 7, ch. 13, part 41.

CHAPTER 8
ELECTRIC UTILITY INDUSTRY GENERATION REINTEGRATION

Part 1 — General Provisions

69-8-101. Short title.
69-8-102. Repealed.
69-8-103. Definitions.
69-8-104. Repealed.
69-8-105 through 69-8-109 reserved.
69-8-110. Terminated.

Part 2 — Public Utilities

69-8-201. Public utility — customer electricity supply service options and requirements — exemption.
69-8-202. Repealed.
69-8-203. Repealed.
69-8-204. Repealed.

69-8-205 through 69-8-207 reserved.
69-8-208. Repealed.
69-8-209. Repealed.
69-8-210. Public utilities — cost tracking — environmentally preferred resources.
69-8-211. Repealed.
69-8-212 through 69-8-214 reserved.
69-8-215. Ratepayer and shareholder protection.

Part 3 — Cooperative Utilities

69-8-301. Repealed.
69-8-302. Repealed.
69-8-303. Repealed.
69-8-304. Repealed.
69-8-305 through 69-8-307 reserved.
69-8-308. Repealed.
69-8-309. Repealed.
69-8-310. Repealed.
69-8-311. Cooperative utility — electricity supply service — exemption.

Part 4 — Public Utilities, Cooperative Utilities, and Electricity Suppliers

69-8-401. Maintaining safety and reliability.
69-8-402. Universal system benefits programs.
69-8-403. Commission rulemaking authority.
69-8-404. Repealed.
69-8-405 through 69-8-407 reserved.
69-8-408. Repealed.
69-8-409. Repealed.
69-8-410. Repealed.
69-8-411. Nondiscriminatory access.
69-8-412. Funds established — fund administrators designated — purpose of funds — department rulemaking authority to administer funds.
69-8-413. Department rulemaking authority.
69-8-414. Universal system benefits programs credit review process — penalties.
69-8-415 reserved.
69-8-416. Repealed.
69-8-417. Repealed.
69-8-418 reserved.
69-8-419. Repealed.
69-8-420. Repealed.
69-8-421. Approval of electricity supply resources.
69-8-422 through 69-8-425 reserved.
69-8-426. Use of generation assets.

Part 5 — Transition and Tax Revenue Analysis

69-8-501. Repealed.
69-8-502. Repealed.
69-8-503. Transition costs financing.

Part 6 — Net Metering

69-8-601. Legislative findings.
69-8-602. Utility net metering requirements.
69-8-603. Net energy measurement calculation.
69-8-604. Net metering system — reliability and safety.
69-8-605. Applicability.
69-8-606 through 69-8-609 reserved.
69-8-610. Cost-benefit analysis.
69-8-611. Classification of service — net metering customers.
69-8-612. New classifications of service — grandfather clause.

Part 7 — Consumer Electricity Support Program (Void)

Part 8 — Electric Vehicle Charging Stations

69-8-801. Definitions.
69-8-802. Electric vehicle charging stations — rate approval.
69-8-803. Electric vehicle charging stations — service entity requirements.
69-8-804. Commission authority — rulemaking.

Part 9 reserved

Part 10 — Renewable Power Production and Rural Economic Development (Renumbered)

Part 1
General Provisions

69-8-101. Short title. This chapter may be cited as the "Electric Utility Industry Generation Reintegration Act".

History: **En. Sec. 1, Ch. 505, L. 1997; amd. Sec. 5, Ch. 491, L. 2007.**

69-8-102. Repealed. Sec. 21, Ch. 491, L. 2007.

History: **En. Sec. 2, Ch. 505, L. 1997; amd. Sec. 5, Ch. 565, L. 2003.**

69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(2) "Board" means the board of investments created by 2-15-1808.

(3) "Carbon offset provider" means a qualified third-party entity that arranges for projects or actions that either reduce carbon dioxide emissions or increase the absorption of carbon dioxide.

(4) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(5) "Cost-effective carbon offsets" means any combination of certified actions that are taken to reduce carbon dioxide emissions or that increase the absorption of carbon dioxide, which collectively do not increase the cost of electricity produced annually on a per-megawatt-hour basis by more than 2.5%, including:

(a) actions undertaken by the applicant that reduce carbon dioxide emissions or that increase the absorption of carbon dioxide from a facility or equipment used to generate electricity; or

(b) actions by a carbon offset provider on behalf of the applicant.

(6) "Customer-generator" means a user of a net metering system.

(7) "Distribution facilities" means those facilities by and through which electricity is received from transmission facilities and distributed to a retail customer and that are controlled or operated by a utility.

(8) "Electricity supply costs" means the actual costs incurred in providing electricity supply service through power purchase agreements, demand-side management, and energy efficiency programs, including but not limited to:

(a) capacity costs;

(b) energy costs;

(c) fuel costs;

(d) ancillary service costs;

(e) transmission costs, including congestion and losses;

(f) planning and administrative costs; and

(g) any other costs directly related to the purchase of electricity and the management and provision of power purchase agreements.

(9) "Electricity supply resource" means:

(a) contracts for electric capacity and generation;

(b) plants owned or leased by a utility or equipment used to generate electricity;

(c) customer load management and energy conservation programs; or

(d) other means of providing adequate, reliable service to customers, as determined by the commission.

(10) "Electricity supply service" means the provision of electricity supply and related services through power purchase agreements, the acquisition and operation of electrical generation facilities, demand-side management, and energy efficiency programs.

(11) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(12) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(13) "Generation assets cost of service" means a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment owned or leased by a public utility and used for the production of electricity.

(14) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(15) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(16) "Local governing body" means a local board of trustees of a rural electric cooperative.

(17) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(18) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(19) "Net metering system" means a facility for the production of electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the utility's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(20) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(21) "Public utility" has the meaning of a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(22) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(23) "Retail customer" means a customer that purchases electricity for residential, commercial, or industrial end-use purposes and does not resell electricity to others.

(24) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that bondholder.

(25) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition

property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(26) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(27) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(28) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of federal law requiring retail open access or customer choice or of this chapter;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(29) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(30) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission and that are controlled or operated by a utility.

(31) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(32) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(33) "Utility" means any public utility or cooperative utility.

History: En. Sec. 3, Ch. 505, L. 1997; amd. Sec. 2, Ch. 323, L. 1999; amd. Sec. 29, Ch. 575, L. 1999; amd. Sec. 2, Ch. 580, L. 1999; amd. Sec. 62, Ch. 7, L. 2001; amd. Sec. 8, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 1, Ch. 584, L. 2001; amd. Sec. 6, Ch. 565, L. 2003; amd. Sec. 6, Ch. 491, L. 2007.

69-8-104. Repealed. Sec. 21, Ch. 491, L. 2007.

History: En. Sec. 4, Ch. 505, L. 1997; amd. Sec. 9, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 2, Ch. 584, L. 2001; amd. Sec. 117, Ch. 114, L. 2003; amd. Sec. 7, Ch. 565, L. 2003.

69-8-105 through 69-8-109 reserved.

69-8-110. Terminated. Sec. 5, Ch. 582, L. 2001.
History: En. Sec. 1, Ch. 582, L. 2001.

Part 2
Public Utilities

69-8-201. Public utility — customer electricity supply service options and requirements — exemption. (1) (a) Except as provided in subsections (1)(b) and (1)(c), a retail customer that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts and that is not purchasing electricity supply service from a public utility on October 1, 2007, may not purchase electricity supply service from a public utility.

(b) A retail customer referred to in subsection (1)(a) may request electricity supply service from the public utility, and the public utility shall provide electricity supply service if the retail customer demonstrates that the provision of electricity supply service to the retail customer will not adversely impact the public utility's other customers over the long term as determined by the commission.

(c) If a public utility provides electricity supply service to a retail customer as provided in subsection (1)(b), that service is regulated by the commission and the customer may not, at a later date, purchase electricity supply service from another provider of electricity supply service.

(2) (a) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts that is not purchasing electricity from a public utility on October 1, 2007, may continue to purchase electricity from an electricity supplier. The retail customer may subsequently purchase electricity from a public utility subject to commission rule or order, but the customer may not, at a later date, choose to purchase electricity from another source.

(b) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts and that is currently purchasing electricity from a public utility may not choose to purchase electricity from another source after October 1, 2007.

(3) Nothing in this section affects a retail customer's rights and obligations with respect to net metering, cogeneration, self-generation, or ancillary sales of electricity related to deviations from scheduled energy deliveries from nonutility suppliers, as may be provided for in law, commission rule or order, or a tariff approved by the public service commission or the federal energy regulatory commission.

(4) (a) Except as provided in 69-5-101, 69-5-102, 69-5-104(2), 69-5-105 through 69-5-112, 69-8-402, 69-8-421, and subsection (4)(b) of this section, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, is exempt from the requirements of this chapter.

(b) To the extent that a public utility described in subsection (4)(a) becomes the successor in interest of another public utility that has restructured in accordance with this chapter before October 1, 2007, it is subject to the requirements of this chapter with respect to the service area of the acquired public utility.

History: En. Sec. 5, Ch. 505, L. 1997; amd. Sec. 30, Ch. 575, L. 1999; amd. Sec. 1, Ch. 175, L. 2001; amd. Sec. 10, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 3, Ch. 584, L. 2001; amd. Sec. 8, Ch. 565, L. 2003; amd. Sec. 7, Ch. 491, L. 2007; amd. Sec. 1, Ch. 251, L. 2023.

69-8-202. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 6, Ch. 505, L. 1997.

69-8-203. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 7, Ch. 505, L. 1997; amd. Sec. 1, Ch. 185, L. 1999; amd. Sec. 11, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 9, Ch. 565, L. 2003.

69-8-204. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 8, Ch. 505, L. 1997; amd. Sec. 10, Ch. 565, L. 2003.

69-8-205 through 69-8-207 reserved.

69-8-208. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 9, Ch. 505, L. 1997; amd. Sec. 11, Ch. 565, L. 2003.

69-8-209. Repealed. Sec. 21, Ch. 491, L. 2007.

History: En. Sec. 10, Ch. 505, L. 1997.

69-8-210. Public utilities — cost tracking — environmentally preferred resources. (1) The commission may approve a cost-tracking adjustment for a public utility regulated under this part consistent with its regulation of public utilities under Title 69, chapter 3.

(2) Notwithstanding any service options that the commission may require, a public utility shall offer its customers the option of purchasing a product composed of or supporting power from certified environmentally preferred resources that include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the commission. The commission shall ensure that these resources have been certified as meeting industry-accepted standards.

History: En. Sec. 11, Ch. 505, L. 1997; amd. Sec. 12, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 5, Ch. 509, L. 2003; amd. Sec. 1, Ch. 600, L. 2003; amd. Sec. 8, Ch. 491, L. 2007; amd. Sec. 1, Ch. 359, L. 2017.

Cross-References

Geothermal research, 90-3-1301.

69-8-211. Repealed. Sec. 21, Ch. 491, L. 2007.

History: En. Sec. 12, Ch. 505, L. 1997; amd. Sec. 31, Ch. 556, L. 1999; amd. Sec. 13, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 4, Ch. 584, L. 2001; amd. Sec. 13, Ch. 565, L. 2003.

69-8-212 through 69-8-214 reserved.

69-8-215. Ratepayer and shareholder protection. (1) Rates established pursuant to Title 69, chapter 3, part 3, may not allow for the recovery of any portion of a civil judgment in a lawsuit arising out of litigation brought by the shareholders of a predecessor in interest against:

(a) the predecessor in interest;
(b) the officers or directors of the predecessor in interest;
(c) the legal advisers or consultants to the predecessor in interest; or
(d) any successor of the predecessor in interest, including a successor in interest.

(2) (a) Subject to subsection (3), an entity subject to regulation under Title 69, including the entity's subsidiaries and affiliates, may not be made a party to litigation brought by the shareholders of a predecessor in interest against:

(i) the predecessor in interest;
(ii) the officers or directors of the predecessor in interest;
(iii) the legal advisers or consultants to the predecessor in interest; or
(iv) any successor of the predecessor in interest that is not a successor in interest.

(b) Except as provided in subsection (3), an entity subject to regulation under Title 69 may not be held liable for a civil judgment entered against:

(i) a predecessor in interest;
(ii) the officers or directors of a predecessor in interest;
(iii) the legal advisers or consultants to a predecessor in interest; or
(iv) any successor of a predecessor in interest that is not a successor in interest.

(3) Subsection (2) does not apply:

(a) to a successor of a public utility regulated by the public service commission pursuant to Title 69, chapter 3, on May 2, 1997, whose shareholders received stock as a result of the sale of a public utility; or

(b) if the liabilities resulting from, related to, or arising out of a reorganization, restructuring, or plan of merger were explicitly assumed by written contract to be the liabilities of the successor to the predecessor in interest.

(4) For the purposes of this section:

(a) "predecessor in interest" means a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, in which an interest was purchased through an arm's-length transaction in which the market value of the public utility property purchased was paid for in cash, debt assumption, or a combination of cash and debt assumption; and

(b) "successor in interest" means the purchaser of all or a portion of a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, through an arm's-length transaction in which the market value of the public utility property purchased was paid for in cash, debt assumption, or a combination of cash and debt assumption.

History: En. Sec. 1, Ch. 472, L. 2003.

Part 3
Cooperative Utilities

69-8-301. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 13, Ch. 505, L. 1997; amd. Sec. 5, Ch. 584, L. 2001; amd. Sec. 14, Ch. 565, L. 2003.

69-8-302. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 14, Ch. 505, L. 1997.

69-8-303. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 15, Ch. 505, L. 1997.

69-8-304. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 16, Ch. 505, L. 1997.

69-8-305 through 69-8-307 reserved.

69-8-308. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 17, Ch. 505, L. 1997.

69-8-309. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 18, Ch. 505, L. 1997.

69-8-310. Repealed. Sec. 21, Ch. 491, L. 2007.
History: En. Sec. 19, Ch. 505, L. 1997.

69-8-311. Cooperative utility — electricity supply service — exemption. (1) A local governing body shall establish the price for electricity supply service offered by a cooperative utility.

(2) Except as otherwise provided in the universal system benefits program pursuant to 69-8-402, a cooperative utility is exempt from the provisions and requirements of this chapter.
History: En. Sec. 20, Ch. 505, L. 1997; amd. Sec. 9, Ch. 491, L. 2007.

Part 4
Public Utilities, Cooperative Utilities, and Electricity Suppliers

69-8-401. Maintaining safety and reliability. Utilities shall maintain standards of safety and reliability of the electric delivery system and existing customer service requirements.
History: En. Sec. 21, Ch. 505, L. 1997.

69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) (a) Except as provided in subsection (11), beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives.

(b) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(c) A utility must receive credit toward annual funding requirements for the utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(d) A utility at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(e) A customer's utility shall collect universal system benefits funds less any allowable credits.

(f) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(g) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of this subsection (2), then the utility or large customer shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) (a) A cooperative utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the cooperative utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) Except as provided in subsection (11), a public utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 50% of the public utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(c) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities. Internal programs and activities may include providing low-income energy and weatherization assistance on Indian reservations.

(d) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) (a) Except as provided in subsection (11), a public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and technology interim committee in accordance with 5-11-210. A cooperative utility shall prepare and submit annual

summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and technology interim committee in accordance with 5-11-210. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and technology interim committee in accordance with 5-11-210. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(i) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(ii) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2);

(iii) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements; and

(iv) the names of all large customers who either utilized credits to minimize or eliminate their charge pursuant to subsection (7) or received a reimbursement for universal system benefits related to expenditures from the utility during the previous reporting year.

(b) Before September 15 of the year preceding a legislative session, the energy and technology interim committee shall:

(i) review the universal system benefits programs and, if necessary, submit recommendations regarding these programs to the legislature; and

(ii) review annual universal system benefits reports provided by utilities in accordance with subsection (8)(a) and compare those reports with reports provided by large customers to the department of revenue in accordance with subsection (10)(a) and identify large customers, if any, who are not in compliance with reporting requirements in accordance with this subsection (8) and subsection (10).

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The department shall annually make the reports available to the energy and technology interim committee in accordance with 5-11-210. A report must be filed with the department even if a large customer is being reimbursed for a prior year's project. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance.

(11) A public utility with fewer than 50 customers is exempt from the requirements of this section.

History: **En. Sec. 22, Ch. 505, L. 1997; amd. Sec. 3, Ch. 580, L. 1999; amd. Sec. 1, Ch. 188, L. 2001; amd. Sec. 14, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 1, Ch. 290, L. 2003; amd. Sec. 15, Ch. 565, L. 2003; amd. Sec. 1, Ch. 256, L. 2005; amd. Sec. 10, Ch. 491, L. 2007; amd. Sec. 1, Ch. 55, L. 2009; amd. Sec. 3, Ch. 252, L. 2015; amd. Sec. 1, Ch. 393, L. 2015; amd. Sec. 19, Ch. 275, L. 2017; amd. Sec. 97, Ch. 261, L. 2021; amd. Sec. 10, Ch. 625, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 625, L. 2025. Amendment effective May 13, 2025.

69-8-403. Commission rulemaking authority. In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

History: **En. Sec. 23, Ch. 505, L. 1997; amd. Sec. 31, Ch. 575, L. 1999; amd. Sec. 15, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 16, Ch. 565, L. 2003; amd. Sec. 11, Ch. 491, L. 2007.**

69-8-404. Repealed. Sec. 21, Ch. 491, L. 2007.

History: En. Sec. 24, Ch. 505, L. 1997.

69-8-405 through 69-8-407 reserved.

69-8-408. Repealed. Sec. 21, Ch. 491, L. 2007.

History: En. Sec. 25, Ch. 505, L. 1997; amd. Sec. 17, Ch. 565, L. 2003.

69-8-409. Repealed. Sec. 21, Ch. 491, L. 2007.

History: En. Sec. 26, Ch. 505, L. 1997; amd. Sec. 18, Ch. 565, L. 2003.

69-8-410. Repealed. Sec. 21, Ch. 491, L. 2007.

History: En. Sec. 27, Ch. 505, L. 1997.

69-8-411. Nondiscriminatory access. (1) Nonutility generators and electricity suppliers must have open, fair, and nondiscriminatory access to a public utility's transmission and distribution facilities according to federal energy regulatory commission rules and regulations for purposes of serving those customers identified in 69-8-201(1) and (2).

(2) Except as provided in 69-5-104(1), public utilities shall grant the retail customers identified in 69-8-201(1) and (2) and their electricity suppliers access to transmission and distribution facilities at rates and under terms and conditions comparable to the public utility's own access to those facilities or access by the public utility's affiliates.

(3) Public utilities shall file tariffs for transmission and distribution services regulated by the federal energy regulatory commission and the commission implementing subsections (1) and (2).

History: En. Sec. 28, Ch. 505, L. 1997; amd. Sec. 4, Ch. 580, L. 1999; amd. Sec. 12, Ch. 491, L. 2007; amd. Sec. 3, Ch. 120, L. 2011.

69-8-412. Funds established — fund administrators designated — purpose of funds — department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(g) or (5)(d), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or both of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services shall expend the money in each representative fund on universal system benefits programs in the utility service territory from which the money was received.

(4) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual assessment of identified funding needs in the utility service territory from which the money was received. In assessing the funding needs, the departments shall solicit utility and public comment from the utility service territory from which the money was received. The annual assessment must also take into account existing utility and large customer universal system benefits programs expenditures.

History: En. Sec. 5, Ch. 580, L. 1999; amd. Sec. 16, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 1, Ch. 180, L. 2003; amd. Sec. 2, Ch. 252, L. 2015; amd. Sec. 20, Ch. 275, L. 2017.

69-8-413. Department rulemaking authority. (1) The department of revenue shall adopt rules on or before September 1, 1999, specifying acceptable universal system benefits programs credits and expenditures and adopting procedures for challenged credits.

(2) Rules adopted pursuant to this part must be adopted in accordance with the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1.

(3) Universal system benefits programs credits claimed or expenditures made prior to the adoption of the rules under subsection (1) must be allowed and are not subject to the requirements of 69-8-414.

History: En. Sec. 6, Ch. 580, L. 1999.

69-8-414. Universal system benefits programs credit review process — penalties. (1) (a) All annual reports required pursuant to 69-8-402(8) and (10) must be filed with the department of revenue on March 1 of each year.

(b) Except as provided in subsection (1)(c), a utility or large customer who fails to file a report in accordance with subsection (1)(a) is subject to an administrative penalty of not less than $1,000 or more than $5,000.

(c) The department may not impose a penalty pursuant to this subsection (1) unless the department:

(i) provides notice to a utility or a large customer of the failure to file a timely report in accordance with 69-8-402(8) or (10); and

(ii) does not receive a report from the utility or a large customer within 20 business days of the notice required pursuant to subsection (1)(c)(i).

(d) Any penalties recovered by the department must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

(2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to 69-8-402(8) and (10).

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit.

History: **En. Sec. 7, Ch. 580, L. 1999; amd. Sec. 17, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 2, Ch. 393, L. 2015.**

69-8-415 reserved.

69-8-416. Repealed. Sec. 20, Ch. 565, L. 2003.

History: En. Sec. 32, Ch. 575, L. 1999; rep. Sec. 30, Ch. 577, L. 2001 (repealer voided by I.R. No. 117, Nov. 5, 2002).

69-8-417. Repealed. Sec. 20, Ch. 565, L. 2003.

History: En. Sec. 33, Ch. 575, L. 1999; rep. Sec. 30, Ch. 577, L. 2001 (repealer voided by I.R. No. 117, Nov. 5, 2002).

69-8-418 reserved.

69-8-419. Repealed. Secs. 16, 20, Ch. 449, L. 2019.

History: En. Sec. 1, Ch. 509, L. 2003; amd. Sec. 13, Ch. 491, L. 2007; amd. Sec. 93, Ch. 2, L. 2009.

69-8-420. Repealed. Secs. 16, 20, Ch. 449, L. 2019.

History: En. Sec. 2, Ch. 509, L. 2003; amd. Sec. 14, Ch. 491, L. 2007; amd. Sec. 1, Ch. 422, L. 2017.

69-8-421. Approval of electricity supply resources. (1) A public utility may apply to the commission for approval of an electricity supply resource that:

(a) is not yet procured; and

(b) is subject to a competitive solicitation process when applicable in accordance with 69-3-1207.

(2) Within 45 days of the public utility's submission of an application for approval, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain the deficiencies.

(3) The commission shall issue an order within 180 days of receipt of an adequate application for approval of a power purchase agreement from an existing generating resource unless it determines that extraordinary circumstances require additional time.

(4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity interest in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for which approval would result in construction of a new electric generating resource. The commission may extend the time limit up to an additional 90 days if it determines that extraordinary circumstances require it.

(b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation resource or a modification to an existing resource, the commission shall hold the public meetings on the application for approval in accordance with 69-3-1205(3) at least 30 days after the issuance of the final air quality permit.

(c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the commission shall extend the time limit in order to comply with subsection (4)(b).

(d) The commission may extend the time limit for issuing an order for an additional 60 days following the meetings pursuant to subsection (4)(b).

(5) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement, if necessary, in accordance with 69-3-1207 prior to the public utility's submission of an application for approval.

(6) (a) The commission may approve or deny, in whole or in part, an application for approval of an electricity supply resource.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for approval.

(c) A commission order granting approval of an application must include the following findings:

(i) approval, in whole or in part, is in the public interest; and

(ii) procurement of the electricity supply resource is consistent with the requirements and objectives in 69-3-201, 69-3-1201 through 69-3-1209, and commission rules.

(d) The commission order may include a provision for allowable generation assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to generate electricity.

(e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. By March 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

(f) The commission order may include other findings that the commission determines are necessary.

(g) A commission order that denies approval must describe why the findings required in subsection (6)(c) could not be reached.

(h) The commission order must approve or deny an initial cost finding, in whole or in part. Any additional costs in excess of the commission approved amount must be approved or denied, in whole or in part, in a subsequent proceeding.

(7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (6)(c), the commission may not subsequently disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

(8) Until the state or federal government has adopted uniformly applicable statewide standards for the capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment may be sequestered offsite from the facility or equipment.

(9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed any power purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201 and commission rules.

(10) The commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part.

History: En. Sec. 3, Ch. 509, L. 2003; amd. Sec. 15, Ch. 491, L. 2007; amd. Sec. 94, Ch. 2, L. 2009; amd. Sec. 15, Ch. 449, L. 2019; amd. Sec. 2, Ch. 251, L. 2023; amd. Sec. 7, Ch. 632, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 632, L. 2025. Amendment effective July 1, 2025.

69-8-422 through 69-8-425 reserved.

69-8-426. Use of generation assets. Generation assets acquired by a public utility pursuant to this chapter:

(1) must be used by the public utility to serve and benefit customers within the public utility's Montana service territory; and

(2) may not be removed from the rate base unless the commission finds that customers of the public utility will not be adversely affected.

History: En. Sec. 19, Ch. 491, L. 2007.

Part 5
Transition and Tax Revenue Analysis

69-8-501. Repealed. Sec. 20, Ch. 565, L. 2003.

History: En. Sec. 29, Ch. 505, L. 1997; amd. Sec. 1, Ch. 372, L. 1999; amd. Sec. 6, Ch. 584, L. 2001.

69-8-502. Repealed. Sec. 20, Ch. 565, L. 2003.

History: En. Sec. 30, Ch. 505, L. 1997; amd. Sec. 63, Ch. 7, L. 2001.

69-8-503. Transition costs financing. (1) A utility may apply to the commission for a determination that certain transition costs may be recovered through the issuance of transition bonds. If transition bonds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition property or to cause the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If transition bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property. A financing order may be adopted only upon the application of a utility and may become effective in accordance with its terms only after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed transition amounts and other charges.

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property, including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The order must set forth the term over which the transition bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to transition property that has been made the basis for the issuance of transition bonds and upon the issuance of transition bonds, the financing orders and the fixed transition amounts must be irrevocable.

(b) If transition bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property;

(ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

(iii) in any way reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when setting other rates for the utility.

(c) The total amount of the transition property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed transition amounts, transition property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed transition amounts that may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect:

"This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision.

Neither the full faith and credit nor the taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the transition property or the proceeds of that property specifically pledged for its payment and not otherwise."

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed transition amounts become transition property when and to the extent that a financing order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and the transition property must thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the financing order or until the transition bonds are paid in full, including all principal, interest, premium, costs, and arrearages on the transition bonds.

(7) Transition bonds may be issued upon commission approval in the pertinent financing order. Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility, other than the transition property as specified in the pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that transition property to one or more assignees in connection with the issuance of transition bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge transition property as collateral for transition bonds to the extent approved in the pertinent financing order and may provide for a security interest in the transition property as provided in this section.

(c) Transition property may be sold, assigned, or transferred for the benefit of:

(i) transition bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(i) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in transition property is valid, is enforceable against the pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed transition amounts included in the transition property;

(b) value has been given by the pledgees of the transition property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the transition property.

(12) (a) A valid and enforceable security interest in transition property is perfected only when it has attached and when a financing statement has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing statement must name the pledgor of the transition property as debtor and identify the transition property.

(b) Any description of the transition property is sufficient if the description refers to the financing order creating the transition property.

(c) The commission may require other filings with respect to the security interest in accordance with procedures the commission may establish, except that these filings may not affect the perfection of the security interest.

(13) A perfected security interest in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection. Transition property constitutes property for all purposes, including for contracts securing transition bonds, whether or not the revenue and proceeds arising with respect to the transition property have accrued.

(14) (a) Subject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the transition property with other funds of the utility that is the pledgor or transferor of the transition property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9A, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the transition property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the transition property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the transition property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

(15) (a) If a default occurs under the security agreement covering the transition property, a pledgee of the transition property, subject to the terms of the security agreement, has all rights and remedies of a secured party upon default under Title 30, chapter 9A, part 6, and is entitled to foreclose or otherwise enforce the pledgee's security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section.

(b) The commission may require in the financing order creating the transition property that in the event of default by the utility in payment of revenue arising with respect to the transition property, the commission and any successor to the commission, upon the application by a pledgee or assignee of the transition property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the transition property.

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferors right, title, and interest, as in a true sale, and not as a pledge or other financing of the transition property, other than for federal and state income and franchise tax purposes.

(b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation of transfer specifically states that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of transition property may be considered perfected as against any third person, including any judicial lien creditor, only when both of the following have taken place:

(a) the financing order authorizing the fixed transition amounts included in the transition property has become effective in accordance with subsection (2); and

(b) an assignment of the transition property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the transition property as debtor and must identify the transition property. Any description of the transition property is sufficient if the description refers to the financing order creating the transition property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure transition bonds.

(19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of transition property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles as those terms are defined in 30-9A-102. Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the transition property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition property previously perfected in the manner described in this section if value has been given by the purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated transition property, whether or not revenue has been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenue has accrued. The lien created under this section is

perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed transition costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of transition property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of transition property or any pledge of transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The transition bonds issued under this chapter are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to transition property and the proceeds of transition property are governed by this section rather than by Title 30, chapter 9A.

(25) Upon the payment in full of transition bond principal and interest, the utility shall discontinue charging and collecting the competitive transition charge associated with that portion of the utility's approved transition costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest.

History: En. Sec. 31, Ch. 505, L. 1997; amd. Sec. 151, Ch. 305, L. 1999; amd. Sec. 19, Ch. 565, L. 2003.

Part 6
Net Metering

69-8-601. Legislative findings. The legislature finds that it is in the public interest to promote net metering because it:

(1) encourages private investment in renewable energy resources;

(2) stimulates Montana's economic growth; and

(3) enhances the continued diversification of the energy resources used in Montana.

History: En. Sec. 1, Ch. 323, L. 1999.

69-8-602. *(Temporary)* **Utility net metering requirements.** A utility shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission determines, after appropriate notice and opportunity for comment:

(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) how the costs of net metering are to be allocated between the customer-generator and the utility; and

(2) charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class. The commission shall determine, after appropriate notice and opportunity for comment if:

(a) the utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and

(b) public policy is best served by imposing these costs on the customer-generator, rather than allocating these costs among the utility's entire customer base.

69-8-602. *(Effective on occurrence of contingency)* **Utility net metering requirements.** (1) A utility shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions.

(2) (a) If the commission determines, after appropriate notice and opportunity for comment, that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, the commission may establish additional metering equipment requirements.

(b) The commission shall consider the benefits and costs to a public utility and a customer-generator of purchasing and installing additional metering equipment and how the costs of additional net metering equipment are to be allocated between the customer-generator and the public utility.

(3) (a) The commission shall charge the customer-generator an appropriate rate pursuant to 69-3-306.

(b) Notwithstanding 69-8-610 through 69-8-612, if the commission determines, after appropriate notice and opportunity for comment, that a public utility is incurring direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems, the commission may impose these costs on the customer-generator, rather than allocating these costs among the public utility's entire customer base.

History: En. Sec. 3, Ch. 323, L. 1999; amd. Sec. 16, Ch. 491, L. 2007; amd. Sec. 5, Ch. 248, L. 2017.

Compiler's Comments

Contingent Effective Date: Section 13(2)(a), Ch. 248, L. 2017, provided that the amendments to this section are effective on the date that the public service commission issues an order making a determination that customer-generators are being served under a separate classification of service in accordance with 69-8-611. Section 13(2)(c), Ch. 248, L. 2017, provided: "The public service commission shall provide a copy of the order to the code commissioner within 10 days of issuing the order."

69-8-603. *(Temporary)* **Net energy measurement calculation.** Consistent with the other provisions of this part, the net energy measurement must be calculated in the following manner:

(1) The utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electricity supplier exceeds the electricity generated by the customer-generator and fed back to the electricity supplier during the billing period, the customer-generator must be billed for the net electricity supplied by the electricity supplier, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electricity supplier, the customer-generator must be:

(a) billed for the appropriate customer charges for that billing period, in accordance with 69-8-602; and

(b) credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) On January 1, April 1, July 1, or October 1 of each year, as designated by the customer-generator as the beginning date of a 12-month billing period, any remaining unused kilowatt-hour credit accumulated during the previous 12 months must be granted to the electricity supplier, without any compensation to the customer-generator.

69-8-603. *(Effective on occurrence of contingency)* **Net energy measurement calculation.** Consistent with the other provisions of this part, and except as provided in 69-8-611(3), the net energy measurement must be calculated in the following manner:

(1) The public utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the public utility exceeds the electricity generated by the customer-generator and fed back to the public utility during the billing period, the customer-generator must be billed for the net electricity supplied by the public utility and billed at the appropriate rate pursuant to 69-3-306, in accordance with 69-8-602 and 69-8-610 through 69-8-612.

(3) Subject to 69-8-602 and 69-8-610 through 69-8-612, if electricity generated by the customer-generator exceeds the electricity supplied by the public utility, the customer-generator must be:

(a) billed at the appropriate rate pursuant to 69-3-306 for that billing period; and

(b) credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) On January 1, April 1, July 1, or October 1 of each year, as designated by the customer-generator as the beginning date of a 12-month billing period, any remaining unused kilowatt-hour credit accumulated during the previous 12 months must be granted to the public utility, without any compensation to the customer-generator.

History: En. Sec. 4, Ch. 323, L. 1999; amd. Sec. 1, Ch. 328, L. 2001; amd. Sec. 17, Ch. 491, L. 2007; amd. Sec. 6, Ch. 248, L. 2017.

Compiler's Comments

Contingent Effective Date: Section 13(2)(a), Ch. 248, L. 2017, provided that the amendments to this section are effective on the date that the public service commission issues an order making a determination that customer-generators are being served under a separate classification of service in accordance with 69-8-611. Section 13(2)(c), Ch. 248, L. 2017, provided: "The public service commission shall provide a copy of the order to the code commissioner within 10 days of issuing the order."

69-8-604. Net metering system — reliability and safety. (1) A net metering system used by a customer-generator must include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, institute of electrical and electronic engineers, and underwriters laboratories.

(2) The commission, after appropriate notice and opportunity for comment, may adopt by rule additional safety, power quality, and interconnection requirements for customer-generators that the commission determines are necessary to protect public safety and net metering system reliability.

(3) The commission shall biennially review and update, if necessary, interconnection requirements and rules for customer-generators to ensure that the requirements and rules:

(a) comply with the most up-to-date national electrical and safety codes and standards; and

(b) are being properly implemented by public utilities subject to this part and other utilities under the commission's jurisdiction that administer net metering programs.

History: En. Sec. 5, Ch. 323, L. 1999; amd. Sec. 1, Ch. 410, L. 2017.

69-8-605. Applicability. This part does not apply to corporations organized under Title 35, chapter 18.

History: En. Sec. 6, Ch. 323, L. 1999.

69-8-606 through 69-8-609 reserved.

69-8-610. Cost-benefit analysis. (1) Before April 1, 2018, a public utility shall:

(a) conduct a study of the costs and benefits of customer-generators as defined in 69-8-103; and

(b) submit the study to the commission for the purpose of making determinations in accordance with a public utility's general rate case pursuant to 69-8-611.

(2) The utility may engage independent consultants or advisory services to complete a cost-benefit study. Costs are recoverable in rates.

(3) After May 3, 2017, the commission may establish minimum information required for inclusion in a study conducted by a public utility in accordance with subsection (1)(a).

History: En. Sec. 1, Ch. 248, L. 2017.

69-8-611. Classification of service — net metering customers. (1) After a study is completed in accordance with 69-8-610 and subject to subsections (2) and (4) of this section, if the commission finds that customer-generators should be served under a separate classification of service as part of a public utility's general rate case, it shall establish appropriate classifications and rates based on the commission's findings relative to:

(a) the utility system benefits of the net metering resource; and

(b) the cost to provide service to customer-generators.

(2) The commission may, based on differences between net metering systems, establish subclassifications and rates as part of a public utility's general rate case.

(3) The commission may approve separate rates for customer-generators' production and consumption and require separate metering subject to 69-8-602 if it finds it is in the public interest and as part of a public utility's general rate case.

(4) If a public utility files a general rate case in accordance with Title 69, chapter 3, the general rate case must include the study required in accordance with 69-8-610 and be used by the commission to meet the requirements of the review of classifications of service required in this section.

History: En. Sec. 2, Ch. 248, L. 2017.

69-8-612. New classifications of service — grandfather clause. (1) Except as provided in subsection (2), if the commission approves new classifications of service for customer-generators in accordance with 69-8-611, the new classifications apply only to customer-generators interconnecting net metering systems on or after the date on which the commission adopts a final order implementing the new classifications.

(2) (a) A customer-generator that interconnects a net metering system prior to commission approval of new classifications of service for customer-generators may accept service under the new classifications of service at any time.

(b) After accepting service under a new classification of service, the customer-generator may not return to its original classification of service.

History: En. Sec. 3, Ch. 248, L. 2017.

Part 7
Consumer Electricity Support Program
(Void)

69-8-701. Void. I.R. No. 117, Nov. 5, 2002.

History: En. Sec. 18, Ch. 577, L. 2001.

69-8-702. Void. I.R. No. 117, Nov. 5, 2002.

History: En. Sec. 19, Ch. 577, L. 2001.

Part 8
Electric Vehicle Charging Stations

69-8-801. Definitions. As used in this part, the following definitions apply:

(1) "Electric vehicle charging station" means a commercial charging station including all required equipment for the provision of power and fueling of electric vehicles.

(2) "Entity" means any party procuring power for the commercial purpose of electric vehicle charging.

History: En. Sec. 1, Ch. 441, L. 2019.

69-8-802. Electric vehicle charging stations — rate approval. (1) A public utility may provide electric service to an electric vehicle charging station under a rate approved by the commission. A public utility electing to provide such service shall apply to the commission for an approved rate before agreeing to provide the service to a customer.

(2) Any rate for providing electric service to an electric vehicle charging station must be designed by the commission to fully recover from the electric charging station customer the full cost of providing the service without subsidization from other customers or customer classes.

History: En. Sec. 2, Ch. 441, L. 2019.

69-8-803. Electric vehicle charging stations — service entity requirements. (1) A public utility shall allow an electric vehicle charging station that meets the requirements in subsection (2) to be interconnected to its distribution system.

(2) A public utility may sell power to an entity to service electric vehicle charging stations that:

(a) procure power supplied by the public utility for the purpose of electric vehicle charging; and

(b) service electric vehicle charging stations within the public utility's service territory.

(3) Entities operating electric vehicle charging stations are not public utilities.
History: **En. Sec. 3, Ch. 441, L. 2019; amd. Sec. 6, Ch. 619, L. 2023.**

69-8-804. Commission authority — rulemaking. The commission may adopt rules to implement and enforce the provisions of this part.
History: **En. Sec. 4, Ch. 441, L. 2019.**

Part 9 reserved

Part 10
Renewable Power Production and Rural Economic Development (Renumbered)

69-8-1001. Renumbered 69-3-2001. Sec. 1, Ch. 220, L. 2007.

69-8-1002. Renumbered 69-3-2002. Sec. 1, Ch. 220, L. 2007.

69-8-1003. Renumbered 69-3-2003. Sec. 1, Ch. 220, L. 2007.

69-8-1004. Renumbered 69-3-2004. Sec. 1, Ch. 220, L. 2007.

69-8-1005. Renumbered 69-3-2005. Sec. 1, Ch. 220, L. 2007.

69-8-1006. Renumbered 69-3-2006. Sec. 1, Ch. 220, L. 2007.

69-8-1007. Renumbered 69-3-2007. Sec. 1, Ch. 220, L. 2007.

69-8-1008. Renumbered 69-3-2008. Sec. 1, Ch. 220, L. 2007.

CHAPTER 9
MONTANA POWER AUTHORITY
(Void)

Part 1 — Montana Power Authority Act (Void)

Part 1
Montana Power Authority Act (Void)

69-9-101. Void. I.R. No. 117, Nov. 5, 2002.
History: **En. Sec. 20, Ch. 577, L. 2001.**

69-9-102. Void. I.R. No. 117, Nov. 5, 2002.
History: **En. Sec. 21, Ch. 577, L. 2001.**

69-9-103. Void. I.R. No. 117, Nov. 5, 2002.
History: **En. Sec. 22, Ch. 577, L. 2001.**

69-9-104 through 69-9-106 reserved.

69-9-107. Void. I.R. No. 117, Nov. 5, 2002.
History: **En. Sec. 23, Ch. 577, L. 2001.**

69-9-108. Void. I.R. No. 117, Nov. 5, 2002.
History: **En. Sec. 24, Ch. 577, L. 2001.**

69-9-109 and 69-9-110 reserved.

69-9-111. Void. I.R. No. 117, Nov. 5, 2002.
History: **En. Sec. 25, Ch. 577, L. 2001.**

69-9-112. Void. I.R. No. 117, Nov. 5, 2002.
History: **En. Sec. 26, Ch. 577, L. 2001.**

69-9-113. Void. I.R. No. 117, Nov. 5, 2002.
History: **En. Sec. 27, Ch. 577, L. 2001.**

69-9-114. Void. I.R. No. 117, Nov. 5, 2002.

History: En. Sec. 28, Ch. 577, L. 2001.

69-9-115. Void. I.R. No. 117, Nov. 5, 2002.

History: En. Sec. 29, Ch. 577, L. 2001.

CHAPTER 10
RESERVED

CHAPTER 11
REGULATION OF CARRIERS
(Repealed)

Part 1 — General Provisions (Repealed)

Part 2 — Carriers of Passengers (Repealed)

Part 3 — Carriers of Messages (Repealed)

Part 4 — Carriers of Property (Repealed)

Part 1
General Provisions
(Repealed)

69-11-101. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2870, Civ. C. 1895; re-en. Sec. 5332, Rev. C. 1907; re-en. Sec. 7846, R.C.M. 1921; Cal. Civ. C. Sec. 2168; Based on Field Civ. C. Sec. 1134; re-en. Sec. 7846, R.C.M. 1935; Sec. 8-701, R.C.M. 1947; (2) En. Sec. 2770, Civ. C. 1895; re-en. Sec. 5296, Rev. C. 1907; re-en. Sec. 7811, R.C.M. 1921; Cal. Civ. C. Sec. 2085; Field Civ. C. Sec. 1085; re-en. Sec. 7811, R.C.M. 1935; Sec. 8-401, R.C.M. 1947; R.C.M. 1947, 8-401, 8-701; amd. Sec. 1997, Ch. 56, L. 2009.

69-11-102. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R.C.M. 1921; Cal. Civ. C. Sec. 2170; re-en. Sec. 7848, R.C.M. 1935; Sec. 8-703, R.C.M. 1947; (2)En. Sec. 2873, Civ. C. 1895; re-en. Sec. 5335, Rev. C. 1907; re-en. Sec. 7849, R.C.M. 1921; Cal. Civ. C. Sec. 2171; Field Civ. C. Sec. 1137; re-en. Sec. 7849, R.C.M. 1935; Sec. 8-704, R.C.M. 1947; R.C.M. 1947, 8-703(part), 8-704.

69-11-103. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2874, Civ. C. 1895; re-en. Sec. 5336, Rev. C. 1907; re-en. Sec. 7850, R.C.M. 1921; Cal. Civ. C. Sec. 2172; re-en. Sec. 7850, R.C.M. 1935; R.C.M. 1947, 8-705; amd. Sec. 1998, Ch. 56, L. 2009.

69-11-104. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2875, Civ. C. 1895; re-en. Sec. 5337, Rev. C. 1907; re-en. Sec. 7851, R.C.M. 1921; Cal. Civ. C. Sec. 2173; Field Civ. C. Sec. 1139; re-en. Sec. 7851, R.C.M. 1935; R.C.M. 1947, 8-706; amd. Sec. 1999, Ch. 56, L. 2009.

69-11-105. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2876, Civ. C. 1895; re-en. Sec. 5338, Rev. C. 1907; re-en. Sec. 7852, R.C.M. 1921; Cal. Civ. C. Sec. 2174; re-en. Sec. 7852, R.C.M. 1935; Sec. 8-707, R.C.M. 1947; (2)En. Sec. 2877, Civ. C. 1895; re-en. Sec. 5339, Rev. C. 1907; re-en. Sec. 7853, R.C.M. 1921; Cal. Civ. C. Sec. 2175; Field Civ. C. Sec. 1141; re-en. Sec. 7853, R.C.M. 1935; Sec. 8-708, R.C.M. 1947; (3)En. Sec. 2878, Civ. C. 1895; re-en. Sec. 5340, Rev. C. 1907; re-en. Sec. 7854, R.C.M. 1921; Cal. Civ. C. Sec. 2176; Field Civ. C. Sec. 1142; re-en. Sec. 7854, R.C.M. 1935; amd. Sec. 11-105, Ch. 264, L. 1963; Sec. 8-709, R.C.M. 1947; R.C.M. 1947, 8-707, 8-708, 8-709; amd. Sec. 2000, Ch. 56, L. 2009.

69-11-106. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2771, Civ. C. 1895; re-en. Sec. 5297, Rev. C. 1907; re-en. Sec. 7812, R.C.M. 1921; Cal. Civ. C. Sec. 2089; Field Civ. C. Sec. 1090; re-en. Sec. 7812, R.C.M. 1935; Sec. 8-402, R.C.M. 1947; (2)En. Sec. 2772, Civ. C. 1895; re-en. Sec. 5298, Rev. C. 1907; re-en. Sec. 7813, R.C.M. 1921; Cal. Civ. C. Sec. 2090; Field Civ. C. Sec. 1091; re-en. Sec. 7813, R.C.M. 1935; Sec. 8-403, R.C.M. 1947; (3)Ap. p. Sec. 2780, Civ. C. 1895; re-en. Sec. 5299, Rev. C. 1907; re-en. Sec. 7814, R.C.M. 1921; Cal. Civ. C. Sec. 2096; Field Civ. C. Sec. 1092; re-en. Sec. 7814, R.C.M. 1935; Sec. 8-404, R.C.M. 1947; Ap. p. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1099; re-en. Sec. 7821, R.C.M. 1935; Sec. 8-411, R.C.M. 1947; R.C.M. 1947, 8-402, 8-403, 8-404, 8-411(part); amd. Sec. 2001, Ch. 56, L. 2009.

69-11-107. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2790, Civ. C. 1895; re-en. Sec. 5300, Rev. C. 1907; re-en. Sec. 7815, R.C.M. 1921; Cal. Civ. C. Sec. 2100; Field Civ. C. Sec. 1093; re-en. Sec. 7815, R.C.M. 1935; Sec. 8-405, R.C.M. 1947; (2)En. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1099; re-en. Sec. 7821, R.C.M. 1935; Sec. 8-411, R.C.M. 1947; (3)En. Sec. 2861, Civ. C. 1895; re-en. Sec. 5331, Rev. C. 1907; re-en. Sec. 7845, R.C.M. 1921; Cal. Civ. C. Sec. 2162; Field Civ. C. Sec. 1133; re-en. Sec. 7845, R.C.M. 1935; Sec. 8-419, R.C.M. 1947; R.C.M. 1947, 8-405, 8-411(part), 8-419; amd. Sec. 2002, Ch. 56, L. 2009.

69-11-108. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 1, Ch. 119, L. 1907; Sec. 4355, Rev. C. 1907; re-en. Sec. 6592, R.C.M. 1921; re-en. Sec. 6592, R.C.M. 1935; Sec. 72-637, R.C.M. 1947; (2)En. Sec. 2, Ch. 119, L. 1907; Sec. 4356, Rev. C. 1907; re-en. Sec. 6593, R.C.M. 1921; re-en. Sec. 6593, R.C.M. 1935; Sec. 72-638, R.C.M. 1947; (3)En. Sec. 3, Ch. 119, L. 1907; Sec. 4357, Rev. C. 1907; re-en. Sec. 6594, R.C.M. 1921; re-en. Sec. 6594, R.C.M. 1935; Sec. 72-639, R.C.M. 1947; R.C.M. 1947, 72-637, 72-638, 72-639; amd. Sec. 2003, Ch. 56, L. 2009.

69-11-109. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1913; re-en. Sec. 6575, R.C.M. 1921; re-en. Sec. 6575, R.C.M. 1935; amd. Sec. 18, Ch. 315, L. 1974; Sec. 72-620, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1913; re-en. Sec. 6576, R.C.M. 1921; re-en. Sec. 6576, R.C.M. 1935; Sec. 72-621, R.C.M. 1947; R.C.M. 1947, 72-620, 72-621; amd. Sec. 14, Ch. 43, L. 1979; amd. Sec. 180, Ch. 575, L. 1981; amd. Sec. 2004, Ch. 56, L. 2009.

69-11-110 through 69-11-120 reserved.

69-11-121. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Secs. 4315, 4316, 4317, 4364, 4365, Civ. C. 1895; re-en. Secs. 6063, 6064, 6065, 6085, 6086, Rev. C. 1907; re-en. Secs. 8681, 8682, 8683, 8703, 8704, R.C.M. 1921; Cal. Civ. C. Secs. 3315, 3316, 3317, 3357, 3358; Field. Civ. C. Secs. 1855, 1856, 1857, 1876, 1877; re-en. Secs. 8681, 8682, 8683, 8703, 8704, R.C.M. 1935; R.C.M. 1947, 17-315, 17-316, 17-317, 17-605(part), 17-606(part); amd. Sec. 15, Ch. 43, L. 1979; amd. Sec. 2005, Ch. 56, L. 2009.

Part 2
Carriers of Passengers
(Repealed)

69-11-201. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2791, Civ. C. 1895; re-en. Sec. 5301, Rev. C. 1907; re-en. Sec. 7816, R.C.M. 1921; Cal. Civ. C. Sec. 2101; Field Civ. C. Sec. 1094; re-en. Sec. 7816, R.C.M. 1935; Sec. 8-406, R.C.M. 1947; (2)En. Sec. 2792, Civ. C. 1895; re-en. Sec. 5302, Rev. C. 1907; re-en. Sec. 7817, R.C.M. 1921; Cal. Civ. C. Sec. 2102; Field Civ. C. Sec. 1095; re-en. Sec. 7817, R.C.M. 1935; Sec. 8-407, R.C.M. 1947; (3)En. Sec. 2793, Civ. C. 1895; re-en. Sec. 5303, Rev. C. 1907; re-en. Sec. 7818, R.C.M. 1921; Cal. Civ. C. Sec. 2103; Field Civ. C. Sec. 1096; re-en. Sec. 7818, R.C.M. 1935; Sec. 8-408, R.C.M. 1947; (4)En. Sec. 2794, Civ. C. 1895; re-en. Sec. 5304, Rev. C. 1907; re-en. Sec. 7819, R.C.M. 1921; Cal. Civ. C. Sec. 2104; Field Civ. C. Sec. 1097; re-en. Sec. 7819, R.C.M. 1935; R.C.M. 1947, 8-406, 8-407, 8-408, 8-409; amd. Sec. 2006, Ch. 56, L. 2009.

69-11-202. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R.C.M. 1921; Cal. Civ. C. Sec. 2170; re-en. Sec. 7848, R.C.M. 1935; R.C.M. 1947, 8-703(part); amd. Sec. 33, Ch. 22, L. 1997.

69-11-203. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2894, Civ. C. 1895; re-en. Sec. 5346, Rev. C. 1907; re-en. Sec. 7860, R.C.M. 1921; Cal. Civ. C. Sec. 2184; Based on Field Civ. C. Sec. 1147; re-en. Sec. 7860, R.C.M. 1935; Sec. 8-805, R.C.M. 1947; (2) En. Sec. 2895, Civ. C. 1895; re-en. Sec. 5347, Rev. C. 1907; re-en. Sec. 7861, R.C.M. 1921; Cal. Civ. C. Sec. 2185; Based on Field Civ. C. Sec. 1148; re-en. Sec. 7861, R.C.M. 1935; Sec. 8-806, R.C.M. 1947; (3)En. Sec. 2896, Civ. C. 1895; re-en. Sec. 5348, Rev. C. 1907; re-en. Sec. 7862, R.C.M. 1921; Cal. Civ. C. Sec. 2186; Field Civ. C. Sec. 1149; re-en. Sec. 7862, R.C.M. 1935; Sec. 8-807, R.C.M. 1947; R.C.M. 1947, 8-805, 8-806, 8-807; amd. Sec. 2007, Ch. 56, L. 2009.

69-11-204. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2891, Civ. C. 1895; re-en. Sec. 5343, Rev. C. 1907; re-en. Sec. 7857, R.C.M. 1921; Cal. Civ. C. Sec. 2181; Field Civ. C. Sec. 1144; re-en. Sec. 7857, R.C.M. 1935; Sec. 8-802, R.C.M. 1947; (2)En. Sec. 2890, Civ. C. 1895; re-en. Sec. 5342, Rev. C. 1907; re-en. Sec. 7856, R.C.M. 1921; Cal. Civ. C. Sec. 2180; Based on Field Civ. C. Sec. 1143; re-en. Sec. 7856, R.C.M. 1935; Sec. 8-801, R.C.M. 1947; (3)En. Sec. 2892, Civ. C. 1895; re-en. Sec. 5344, Rev. C. 1907; re-en. Sec. 7858, R.C.M. 1921; Cal. Civ. C. Sec. 2182; Field Civ. C. Sec. 1145; re-en. Sec. 7858, R.C.M. 1935; Sec. 8-803, R.C.M. 1947; (4)En. Sec. 2893, Civ. C. 1895; re-en. Sec. 5345, Rev. C. 1907; re-en. Sec. 7859, R.C.M. 1921; Cal. Civ. C. Sec. 2183; re-en. Sec. 7859, R.C.M. 1935; Sec. 8-804, R.C.M. 1947; R.C.M. 1947, 8-801, 8-802, 8-803, 8-804; amd. Sec. 2008, Ch. 56, L. 2009.

69-11-205. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2897, Civ. C. 1895; re-en. Sec. 5349, Rev. C. 1907; re-en. Sec. 7863, R.C.M. 1921; Cal. Civ. C. Sec. 2187; Field Civ. C. Sec. 1150; re-en. Sec. 7863, R.C.M. 1935; R.C.M. 1947, 8-808.

69-11-206. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2900, Civ. C. 1895; re-en. Sec. 5352, Rev. C. 1907; re-en. Sec. 7866, R.C.M. 1921; Cal. Civ. C. Sec. 2191; Field Civ. C. Sec. 1153; re-en. Sec. 7866, R.C.M. 1935; R.C.M. 1947, 8-811; amd. Sec. 2009, Ch. 56, L. 2009.

69-11-207. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1), (2)En. Sec. 1, Ch. 136, L. 1911; re-en. Sec. 6572, R.C.M. 1921; re-en. Sec. 6572, R.C.M. 1935; Sec. 72-616, R.C.M. 1947; (3)En. Sec. 3, Ch. 136, L. 1911; re-en. Sec. 6574, R.C.M. 1921; re-en. Sec. 6574, R.C.M. 1935; Sec. 72-619, R.C.M. 1947; R.C.M. 1947, 72-616, 72-619.

69-11-208. Repealed. Sec. 2, Ch. 163, L. 2023.

History: Ap.p. Sec. 2, Ch. 136, L. 1911; re-en. Sec. 6573, R.C.M. 1921; amd. Sec. 1, Ch. 113, L. 1929; amd. Sec. 1, Ch. 78, L. 1933; re-en. Sec. 6573, R.C.M. 1935; amd. Sec. 35, Ch. 535, L. 1975; Sec. 72-617, R.C.M. 1947; Ap.p. Sec. 1, Ch. 9, L. 1929; re-en. Sec. 6573.1, R.C.M. 1935; amd. Sec. 36, Ch. 535, L. 1975; Sec. 72-618, R.C.M. 1947; R.C.M. 1947, 72-617(part), 72-618; amd. Sec. 16, Ch. 43, L. 1979; amd. Sec. 2010, Ch. 56, L. 2009.

69-11-209. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2898, Civ. C. 1895; re-en. Sec. 5350, Rev. C. 1907; re-en. Sec. 7864, R.C.M. 1921; Cal. Civ. C. Sec. 2188; Based on Field Civ. C. Sec. 1151; re-en. Sec. 7864, R.C.M. 1935; Sec. 8-809, R.C.M. 1947; (2) En. Sec. 2899, Civ. C. 1895; re-en. Sec. 5351, Rev. C. 1907; re-en. Sec. 7865, R.C.M. 1921; Cal. Civ. C. Sec. 2190; Field Civ. C. Sec. 1152; re-en. Sec. 7865, R.C.M. 1935; Sec. 8-810, R.C.M. 1947; R.C.M. 1947, 8-809, 8-810; amd. Sec. 2011, Ch. 56, L. 2009.

Part 3
Carriers of Messages
(Repealed)

69-11-301. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2860, Civ. C. 1895; re-en. Sec. 5330, Rev. C. 1907; re-en. Sec. 7844, R.C.M. 1921; Cal. Civ. C. Sec. 2161; re-en. Sec. 7844, R.C.M. 1935; R.C.M. 1947, 8-418; amd. Sec. 2012, Ch. 56, L. 2009.

69-11-302. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2930, Civ. C. 1895; re-en. Sec. 5361, Rev. C. 1907; re-en. Sec. 7875, R.C.M. 1921; Cal. Civ. C. Sec. 2207; Based on Field Civ. C. Sec. 1164; re-en. Sec. 7875, R.C.M. 1935; Sec. 8-820, R.C.M. 1947; (2) En. Sec. 2931, Civ. C. 1895; re-en. Sec. 5362, Rev. C. 1907; re-en. Sec. 7876, R.C.M. 1921; Cal. Civ. C. Sec. 2208; Based on Field Civ. C. Sec. 1165; re-en. Sec. 7876, R.C.M. 1935; Sec. 8-821, R.C.M. 1947; R.C.M. 1947, 8-820, 8-821; amd. Sec. 2013, Ch. 56, L. 2009.

69-11-303. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2932, Civ. C. 1895; re-en. Sec. 5363, Rev. C. 1907; re-en. Sec. 7877, R.C.M. 1921; Cal. Civ. C. Sec. 2209; Based on Field Civ. C. Sec. 1166; re-en. Sec. 7877, R.C.M. 1935; R.C.M. 1947, 8-822; amd. Sec. 2014, Ch. 56, L. 2009.

69-11-304. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2879, Civ. C. 1895; re-en. Sec. 5341, Rev. C. 1907; re-en. Sec. 7855, R.C.M. 1921; Cal. Civ. C. Sec. 2177; re-en. Sec. 7855, R.C.M. 1935; R.C.M. 1947, 8-710; amd. Sec. 2015, Ch. 56, L. 2009.

Part 4
Carriers of Property
(Repealed)

69-11-401. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2800, Civ. C. 1895; re-en. Sec. 5305, Rev. C. 1907; re-en. Sec. 7820, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1098; re-en. Sec. 7820, R.C.M. 1935; R.C.M. 1947, 8-410.

69-11-402. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2811, Civ. C. 1895; re-en. Sec. 5307, Rev. C. 1907; re-en. Sec. 7822, R.C.M. 1921; Cal. Civ. C. Sec. 2115; Field Civ. C. Sec. 1100; re-en. Sec. 7822, R.C.M. 1935; Sec. 8-412, R.C.M. 1947; (2)En. Sec. 2812, Civ. C. 1895; re-en. Sec. 5308, Rev. C. 1907; re-en. Sec. 7823, R.C.M. 1921; Cal. Civ. C. Sec. 2118; Field Civ. C. Sec. 1101; re-en. Sec. 7823, R.C.M. 1935; Sec. 8-413, R.C.M. 1947; R.C.M. 1947, 8-412, 8-413; amd. Sec. 2016, Ch. 56, L. 2009.

69-11-403. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2871, Civ. C. 1895; re-en. Sec. 5333, Rev. C. 1907; re-en. Sec. 7847, R.C.M. 1921; Cal. Civ. C. Sec. 2169; Field Civ. C. Sec. 1135; re-en. Sec. 7847, R.C.M. 1935; R.C.M. 1947, 8-702; amd. Sec. 2017, Ch. 56, L. 2009.

69-11-404. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2813, Civ. C. 1895; re-en. Sec. 5309, Rev. C. 1907; re-en. Sec. 7824, R.C.M. 1921; Cal. Civ. C. Sec. 2118; Field Civ. C. Sec. 1103; re-en. Sec. 7824, R.C.M. 1935; Sec. 8-414, R.C.M. 1947; (2)En. Sec. 2814, Civ. C. 1895; re-en. Sec. 5310, Rev. C. 1907; re-en. Sec. 7825, R.C.M. 1921; Cal. Civ. C. Sec. 2119; Based on Field Civ. C. Sec. 1104; re-en. Sec. 7825, R.C.M. 1935; Sec. 8-415, R.C.M. 1947; (3)En. Sec. 2815, Civ. C. 1895; re-en. Sec. 5311, Rev. C. 1907; re-en. Sec. 7826, R.C.M. 1921; Cal. Civ. C. Sec. 2120; Based on Field Civ. C. Sec. 1105; re-en. Sec. 7826, R.C.M. 1935; R.C.M. 1947, 8-414, 8-415, 8-416; amd. Sec. 2018, Ch. 56, L. 2009.

69-11-405. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2816, Civ. C. 1895; re-en. Sec. 5312, Rev. C. 1907; re-en. Sec. 7827, R.C.M. 1921; Cal. Civ. C. Sec. 2121; Field Civ. C. Sec. 1106; re-en. Sec. 7827, R.C.M. 1935; R.C.M. 1947, 8-417; amd. Sec. 2019, Ch. 56, L. 2009.

69-11-406. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2840, Civ. C. 1895; re-en. Sec. 5321, Rev. C. 1907; re-en. Sec. 7835, R.C.M. 1921; Field Civ. C. Sec. 1115; re-en. Sec. 7835, R.C.M. 1935; Sec. 8-601, R.C.M. 1947; (2)En. Sec. 2841, Civ. C. 1895; re-en. Sec. 5322, Rev. C. 1907; re-en. Sec. 7836, R.C.M. 1921; Cal. Civ. C. Sec. 2137; Field Civ. C. Sec. 1116; re-en. Sec. 7836, R.C.M. 1935; Sec. 8-602, R.C.M. 1947; (3)En. Sec. 2842, Civ. C. 1895; re-en. Sec. 5323, Rev. C. 1907; re-en. Sec. 7837, R.C.M. 1921; Cal. Civ. C. Sec. 2138; Field Civ. C. Sec. 1117; re-en. Sec. 7837, R.C.M. 1935; Sec. 8-603, R.C.M. 1947; R.C.M. 1947, 8-601, 8-602, 8-603; amd. Sec. 2020, Ch. 56, L. 2009.

69-11-407. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2843, Civ. C. 1895; re-en. Sec. 5324, Rev. C. 1907; re-en. Sec. 7838, R.C.M. 1921; Cal. Civ. C. Sec. 2139; Field Civ. C. Sec. 1118; re-en. Sec. 7838, R.C.M. 1935; R.C.M. 1947, 8-604.

69-11-408. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2844, Civ. C. 1895; re-en. Sec. 5325, Rev. C. 1907; re-en. Sec. 7839, R.C.M. 1921; Cal. Civ. C. Sec. 2140; Field Civ. C. Sec. 1119; re-en. Sec. 7839, R.C.M. 1935; Sec. 8-605, R.C.M. 1947; (2)En. Sec. 2845, Civ. C. 1895; re-en. Sec. 5326, Rev. C. 1907; re-en. Sec. 7840, R.C.M. 1921; Cal. Civ. C. Sec. 2141; Field Civ. C. Sec. 1120; re-en. Sec. 7840, R.C.M. 1935; Sec. 8-606, R.C.M. 1947; R.C.M. 1947, 8-605, 8-606; amd. Sec. 2021, Ch. 56, L. 2009.

69-11-409. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1)En. Sec. 2846, Civ. C. 1895; re-en. Sec. 5327, Rev. C. 1907; re-en. Sec. 7841, R.C.M. 1921; Cal. Civ. C. Sec. 2142; Field Civ. C. Sec. 1121; re-en. Sec. 7841, R.C.M. 1935; Sec. 8-607, R.C.M. 1947; (2)En. Sec. 2847, Civ. C. 1895; re-en. Sec. 5328, Rev. C. 1907; re-en. Sec. 7842, R.C.M. 1921; Cal. Civ. C. Sec. 2143; Field Civ. C. Sec. 1122; re-en. Sec. 7842, R.C.M. 1935; Sec. 8-608, R.C.M. 1947; R.C.M. 1947, 8-607, 8-608; amd. Sec. 2022, Ch. 56, L. 2009.

69-11-410. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2848, Civ. C. 1895; re-en. Sec. 5329, Rev. C. 1907; re-en. Sec. 7843, R.C.M. 1921; Cal. Civ. C. Sec. 2144; Field Civ. C. Sec. 1123; re-en. Sec. 7843, R.C.M. 1935; R.C.M. 1947, 8-609.

69-11-411. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2917, Civ. C. 1895; re-en. Sec. 5360, Rev. C. 1907; re-en. Sec. 7874, R.C.M. 1921; Cal. Civ. C. Sec. 2204; re-en. Sec. 7874, R.C.M. 1935; R.C.M. 1947, 8-819; amd. Sec. 2023, Ch. 56, L. 2009.

69-11-412. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1), (2)En. Sec. 2, Ch. 105, L. 1913; re-en. Sec. 3836, R.C.M. 1921; re-en. Sec. 3836, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-158, R.C.M. 1947; (3)En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-163, R.C.M. 1947; R.C.M. 1947, 72-158, 72-163(part).

69-11-413 through 69-11-420 reserved.

69-11-421. Repealed. Sec. 2, Ch. 163, L. 2023.

History: (1) thru (4)En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; Sec. 8-812.1, R.C.M. 1947; (5)En. Sec. 2911, Civ. C. 1895; re-en. Sec. 5354, Rev. C. 1907; re-en. Sec. 7868, R.C.M. 1921; Cal. Civ. C. Sec. 2195; Field Civ. C. Sec. 1155; re-en. Sec. 7868, R.C.M. 1935; Sec. 8-813, R.C.M. 1947; R.C.M. 1947, 8-812.1(part), 8-813; amd. Sec. 17, Ch. 43, L. 1979; amd. Sec. 2024, Ch. 56, L. 2009.

69-11-422. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

69-11-423. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

69-11-424. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part); amd. Sec. 2025, Ch. 56, L. 2009.

69-11-425. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

69-11-426. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

69-11-427. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. 8-812.2 by Sec. 2, Ch. 168, L. 1975; R.C.M. 1947, 8-812.2.

69-11-428. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2912, Civ. C. 1895; re-en. Sec. 5355, Rev. C. 1907; re-en. Sec. 7869, R.C.M. 1921; Cal. Civ. C. Sec. 2196; Field Civ. C. Sec. 1156; re-en. Sec. 7869, R.C.M. 1935; R.C.M. 1947, 8-814; amd. Sec. 2026, Ch. 56, L. 2009.

69-11-429. Repealed. Sec. 2, Ch. 163, L. 2023.

History: En. Sec. 2913, Civ. C. 1895; re-en. Sec. 5356, Rev. C. 1907; re-en. Sec. 7870, R.C.M. 1921; Cal. Civ. C. Sec. 2200; Field Civ. C. Sec. 1160; re-en. Sec. 7870, R.C.M. 1935; R.C.M. 1947, 8-815; amd. Sec. 2027, Ch. 56, L. 2009.

CHAPTER 12
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Operation of municipal busline, 7-14-4403.
Motor carriers' reports of beer transported, 16-3-235.
Fees under this chapter applicable to driveaway and towaway transportation, 61-4-304.
Size — weight — load, Title 61, ch. 10.
Supervision of motor carriers, 69-12-203.

Part 1
General Provisions

69-12-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means a certificate of public convenience and necessity or a certificate of compliance issued under this chapter.

(3) "Certificate of compliance" means written authorization to operate issued by the commission for Class A or Class E motor carriers that transport passengers declaring that the motor carrier meets the fitness requirements of this chapter.

(4) "Certificate of public convenience and necessity" means a written authorization to operate issued by the commission for Class A motor carriers that transport property or persons and property and Class D motor carriers declaring that the motor carrier service is required by the public convenience and necessity, as provided in this chapter.

(5) "Charter service" means a service used for the transportation of passengers by a motor carrier with rates not subject to approval by the commission if:

(a) the transportation of passengers is based on a single contract;

(b) the contract is entered into in advance of the transportation and does not result from a spontaneous, curbside agreement;

(c) the contract includes a single fixed charge and fares are not assessed per passenger;

(d) the passenger or group of passengers acquires exclusive use of the motor vehicle through the contract; and

(e) when applied to a group of passengers being transported, the group of passengers travels together to a specified destination.

(6) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(7) "Corporation" means a corporation, company, association, or joint-stock association.

(8) "Digital network" means any online-enabled application, software, website, or system offered or utilized by a transportation network carrier that enables the prearrangement of rides with transportation network carrier drivers.

(9) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(10) "Garbage" means ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is transported to a licensed transfer station, licensed landfill, licensed municipal solid waste incinerator, or licensed disposal well. The term does not include wastewater and waste tires.

(11) "Household goods" means any of the following:

(a) personal effects and property used or to be used in a dwelling when they are a part of the equipment or supply of the dwelling. The term does not include property moving from a factory or store unless the property is purchased by a householder for use in a dwelling and is transported at the request of the householder.

(b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when those items are a part of the stock, equipment, or supply of the stores, offices, museums, institutions, hospitals, or other establishments. The term does not include the stock-in-trade of an establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment or a portion of the establishment from one location to another.

(c) articles, including objects of art, displays, and exhibitions that because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods and other similar articles.

(12) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. A motor carrier includes a transportation network carrier.

(13) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

(14) "Person" means an individual, firm, or partnership.

(15) "Personal vehicle" means a vehicle that is used by a transportation network carrier driver in connection with providing a prearranged ride and is:

(a) owned, leased, or otherwise authorized for use by the transportation network carrier driver; and

(b) not a taxicab, limousine, or for-hire vehicle.

(16) "Prearranged ride" means transportation provided by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network carrier, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxicab, limousine, or other for-hire vehicle pursuant to Title 69, chapter 12.

(17) "Public highway" means a public street, road, highway, or way in this state.

(18) "Railroad" means the movement of cars on rails, regardless of the motive power used.

(19) "Recyclable" means any material diverted from the solid waste stream that can be reused in the production of heat or energy or as raw material for new products and for which markets exist.

(20) "Transportation network carrier" means an entity that uses a digital network or software application service to connect passengers to transportation network carrier services provided by transportation network carrier drivers. A transportation network carrier may not

be deemed to control, direct, or manage the personal vehicles or transportation network carrier drivers that connect to its digital network, except where agreed to by written contract.

(21) "Transportation network carrier driver" or "driver" means an individual who:

(a) receives connections to potential riders and related services from a transportation network carrier in exchange for payment of a fee to the transportation network carrier; and

(b) uses a personal vehicle to provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network carrier in return for compensation or payment of a fee.

(22) "Transportation network carrier rider" or "rider" means an individual or persons who use a transportation network carrier's digital network to connect with a transportation network carrier driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

(23) "Transportation network carrier services" means the transportation of a passenger between points chosen by the passenger and prearranged with a transportation network carrier driver through the use of a transportation network carrier digital network or software application.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part); amd. Sec. 18, Ch. 43, L. 1979; amd. Sec. 1, Ch. 341, L. 1991; amd. Sec. 1, Ch. 481, L. 1991; amd. Sec. 1, Ch. 364, L. 1993; amd. Sec. 8, Ch. 358, L. 1995; amd. Sec. 1, Ch. 218, L. 2011; amd. Sec. 8, Ch. 456, L. 2015; amd. Sec. 1, Ch. 512, L. 2021; amd. Sec. 1, Ch. 422, L. 2023.

Cross-References

Corporations, Partnerships, and Associations, Title 35.
Highways and Transportation, Title 60.
Railroad defined, 69-14-102.

69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village with a population of less than 500 persons, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2;

(ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; or

(iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government;

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection (1)(k), "private, nonprofit organizations" means organizations recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(l) the transportation of a group of passengers if:

(i) the motor vehicle used for the transportation of the passengers is designed to carry more than 26 passengers; and

(ii) the motor carrier has obtained a USDOT number from the U.S. department of transportation as provided in 49 CFR 390.19; or

(m) the transportation of a group of employees to or from a worksite by a motor carrier under contract with the employer for a period of time of at least 1 year; or

(n) the transportation by motor vehicle of not more than 15 people to or from outdoor recreation sites, including but not limited to trailheads, fishing access sites, boat ramps and docks, ski slopes and trails, state parks, and national forests, or on a circular tour, with or without stops, of points of interest, except that the commission may require proof of insurance. The commission may not entertain third-party objections to the proof of insurance required under this subsection (1)(n). The commission may adopt rules to implement this subsection (1)(n).

(2) This chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part); amd. Sec. 1, Ch. 514, L. 1979; amd. Sec. 1, Ch. 227, L. 1981; amd. Sec. 1, Ch. 27, L. 1983; amd. Sec. 1, Ch. 75, L. 1983; amd. Sec. 2, Ch. 160, L. 1983; amd. Sec. 1, Ch. 584, L. 1983; amd. Sec. 1, Ch. 178, L. 1985; amd. Sec. 1, Ch. 322, L. 1991; amd. Sec. 2, Ch. 481, L. 1991; amd. Sec. 2, Ch. 364, L. 1993; amd. Sec. 15, Ch. 283, L. 1995; amd. Sec. 9, Ch. 358, L. 1995; amd. Sec. 9, Ch. 88, L. 2003; amd. Sec. 1, Ch. 82, L. 2005; amd. Sec. 1, Ch. 223, L. 2007; amd. Sec. 2, Ch. 224, L. 2009; amd. Sec. 2, Ch. 218, L. 2011; amd. Sec. 9, Ch. 456, L. 2015; amd. Sec. 9, Ch. 89, L. 2021; amd. Sec. 1, Ch. 212, L. 2021.

Cross-References

School buses and transportation, Title 20, ch. 10, part 1.
Regulation of armored car services, Title 37, ch. 60.
Regulation of logging trucks, 61-9-414.
Regulation of tow trucks, 61-9-416.
Air carrier defined, 67-1-101.

69-12-103. Repealed. Sec. 12, Ch. 358, L. 1995.

History: (1)En. Sec. 23, Ch. 184, L. 1931; re-en. Sec. 3847.23, R.C.M. 1935; Sec. 8-123, R.C.M. 1947; (2)En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; Sec. 8-116, R.C.M. 1947; R.C.M. 1947, 8-116(b), 8-123; amd. Sec. 1, Ch. 106, L. 1991.

69-12-104. Determination of operation between fixed termini or over a regular route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini or over a regular route or otherwise under this chapter is a question of fact to be determined by the commission.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part).

69-12-105. Nature of accommodative transportation. An accommodative transportation movement by a person not in the transportation business is not a service for hire even though the persons owning the property transported or persons transported share in the cost or pay for the movement.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part).

69-12-106. Acts indicative of status as motor carrier. Any person or corporation maintaining a public motor vehicle stand or by sign, symbol, or device or vehicle or clothing or by advertisement holding forth transportation for compensation or soliciting the transportation of persons or property for compensation among the public or soliciting for trips for compensation or providing transportation service to the public under the guise of leasing or buy-and-sell arrangements shall be deemed, prima facie, a "motor carrier" subject to this chapter. The burden of proof shall be on such person or corporation to disprove such status.

History: **En. Sec. 21, Ch. 184, L. 1931; re-en. Sec. 3847.21, R.C.M. 1935; amd. Sec. 3, Ch. 204, L. 1963; R.C.M. 1947, 8-121.**

69-12-107. Status of private carriers under motor carrier laws. Nothing in this chapter shall be construed as converting or attempting to convert a private carrier into a common carrier. It is hereby declared that this chapter is intended primarily as a regulation of the public highways of the state.

History: **En. Sec. 22, Ch. 184, L. 1931; re-en. Sec. 3847.22, R.C.M. 1935; R.C.M. 1947, 8-122.**

Cross-References

Classification — highways and roads, 60-1-201.

69-12-108. Violations. Any motor carrier subject to the provisions of this chapter, as amended, or whenever any such motor carrier is a corporation, any director or officer thereof; any receiver, trustee, lessee, agent, or person acting for or employed by such corporation; any person, corporation, or association or officer, agent, or employee thereof; or any broker of property or officer, agent, or employee thereof who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of this chapter, as amended, or who fails to obey, observe, or comply with any lawful order, decision, rule, direction, demand, or requirement of the commission or any part of the provisions thereof is:

(1) subject to a civil penalty, to be collected and deposited to the general fund by the commission after notice and hearing, in an amount not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense; or

(2) subject, upon conviction in a justice's court, to a fine of not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense.

History: **En. Sec. 19, Ch. 184, L. 1931; re-en. Sec. 3847.19, R.C.M. 1935; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967; amd. Sec. 1, Ch. 68, L. 1971; amd. Sec. 1, Ch. 282, L. 1977; R.C.M. 1947, 8-119; amd. Sec. 19, Ch. 43, L. 1979; amd. Sec. 1, Ch. 330, L. 1979.**

Cross-References

Agency, Title 28, ch. 10.
Misdemeanor defined, 45-2-101.
Criminal responsibility of corporation, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Enforcement procedures, 69-12-209.
Revocation of certificate, 69-12-327.
Failure to display ownership identification — penalty, 69-12-408.

Part 2
Role of Commission

69-12-201. Supervision and regulation of motor carriers. (1) The commission has the power and authority and it is its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, and affairs of all motor carriers;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between motor carriers and the traveling and shipping public.

(2) The commission may, by general order or otherwise, prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

History: **(1)(a) thru (1)(e), (3)En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-103, R.C.M. 1947; (1)(f), (1)(g), (2)**

En. Sec. 2, Ch. 227, L. 1981; (4)En. Sec. 1, Ch. 201, L. 1961; Sec. 8-104.1, R.C.M. 1947; R.C.M. 1947, 8-103(part), 8-104.1; amd. Sec. 3, Ch. 226, L. 1981; amd. Sec. 2, Ch. 227, L. 1981; amd. Sec. 1, Ch. 686, L. 1985; amd. Sec. 3, Ch. 481, L. 1991; amd. Sec. 3, Ch. 364, L. 1993; amd. Sec. 2, Ch. 512, L. 2021; amd. Sec. 2, Ch. 422, L. 2023.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.
Fees, 69-12-423.

69-12-202. Encouragement of common carrier motor transportation. To fully secure adequate motor transportation facilities for all users of such service and to secure the public advantages thereof, the commission shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(part).

69-12-203. Field inspectors. The commission may employ field inspectors to investigate and enforce the provisions of this chapter. Field inspectors employed by the commission are peace officers for the purpose of making arrests in connection with violations of this chapter and issuing summonses, accepting bail, and serving warrants of arrest. The field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of the vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(b); amd. Sec. 20, Ch. 43, L. 1979; amd. Sec. 1, Ch. 331, L. 1979; amd. Sec. 4, Ch. 226, L. 1981; amd. Sec. 2, Ch. 686, L. 1985; amd. Sec. 2028, Ch. 56, L. 2009; amd. Sec. 1, Ch. 4, L. 2011.

Cross-References

Enforcement of motor carriers law, 44-1-1005.
Arrest warrants, Title 46, ch. 6, part 2.
Bail, Title 46, ch. 9.
Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

69-12-204. General administrative procedure. Insofar as possible and applicable, the provisions of statutes prescribing the procedure before the commission in cases involving rates, facilities, service, or other affairs of railroads in this state, including forms of applications, complaints, answers, orders, and notices of hearing; the conducting of hearings; compelling the attendance and testimony of witnesses and the production of records, data, and information; and the preparation, recording, and serving of reports and orders of the commission, shall be followed and shall govern in all proceedings and investigations before the commission in cases arising in connection with the performance by the commission of its duties or the exercise of its jurisdiction under the provisions of this chapter.

History: En. Sec. 14, Ch. 184, L. 1931; re-en. Sec. 3847.14, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-114(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Public transportation issues — Department of Transportation to represent state, 60-21-101.
Railroads, Title 69, ch. 14.

69-12-205. Rules to reflect differences between carrier classes. (1) Except as provided in subsection (3), rules related to schedules, service, tariffs, rates, facilities, accounts, and reports must recognize the differences between types of Class A, Class D, and Class E motor carriers, as defined in this chapter, and must be just, fair, and reasonable to the classes and types of motor carriers in relation to each other and to the public.

(2) (a) In establishing the tariff or rates to be charged by Class A motor carriers for the carrying of persons, the commission shall take into consideration the kind and character of service to be performed.

(b) In establishing the tariff or rates to be charged by Class A motor carriers for the carrying of property or persons and property, the commission shall take into consideration the public necessity of the service, the kind and character of service to be performed, and the effect of the tariff and rates on other transportation agencies, if any. The commission shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

(3) Except as provided in 69-12-341, a Class E motor carrier is not subject to commission rules related to schedules, tariffs, or rates.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(c); amd. Sec. 1, Ch. 352, L. 1979; amd. Sec. 4, Ch. 481, L. 1991; amd. Sec. 4, Ch. 364, L. 1993; amd. Sec. 10, Ch. 456, L. 2015; amd. Sec. 3, Ch. 512, L. 2021; amd. Sec. 3, Ch. 422, L. 2023.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Classification and motor carrier certificates, Title 69, ch. 12, part 3.

69-12-206. Investigations by commission. (1) Any investigation, inquiry, or hearing which the commission has power to undertake or to hold under the provisions of this chapter may be undertaken or held by or before any member of the commission or by and before any agent or examiner of the commission designated for the purpose by the commission. Every finding, order, or decision made by a member of the commission or agent or examiner of the commission so designated, together with a statement in writing of the reasons therefor (which statement must be included in the finding, order, or decision, pursuant to the investigation, inquiry, or hearing) when approved and confirmed by the commission and ordered filed in its office shall be considered the finding, order, or decision of the commission.

(2) An agent or examiner of the commission designated as aforesaid may administer oaths, examine witnesses, and receive evidence.

History: En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; R.C.M. 1947, 8-111(2).

69-12-207. Temporary operating authority. (1) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the commission may, in its discretion upon affidavits or such other evidence as it may deem sufficient and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. Such affidavits or other evidence as the commission may determine must accompany the application for temporary authority. The affidavits or other evidence must specify in detail the reason for supporting the application for temporary authority and the term within which the temporary authority would be required.

(2) Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for not more than 90 days. Temporary authority initially granted pursuant to the provisions hereof may be extended by the commission without hearings or other proceedings, but in no case shall a grant of temporary authority with extensions exceed an aggregate of 120 days.

(3) Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of this chapter and to the rules and requirements of the commission thereunder.

History: En. Sec. 1, Ch. 148, L. 1971; amd. Sec. 1, Ch. 231, L. 1973; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-131.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

69-12-208. Provisions for bus service. The commission, after 10 days' notice and public hearing, shall have the power to compel all motor carrier bus lines under its jurisdiction to furnish, provide, and maintain such service, instrumentalities, equipment, facilities, and time schedules as shall promote the safety, health, comfort, and convenience of its passengers and employees and the public and as shall in all respects be adequate, efficient, just, and reasonable.

History: En. Sec. 2, Ch. 143, L. 1943; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-129.

69-12-209. Enforcement procedures. (1) Orders and final determinations of the commission in all proceedings pursuant to the provisions of this chapter must be enforced in the manner provided for by the commission in accordance with Title 69, chapter 14, part 1.

(2) If any motor carrier violates the provisions of this chapter or fails or neglects to obey a commission order, the commission or any party injured may apply to any court of competent jurisdiction, in any county where the motor carrier is engaged in business, for the enforcement of this chapter or the order. The court shall enforce the provisions of this chapter or commission orders by writ of injunction or other proper process, mandatory or otherwise, to restrain the carrier or its officers, agents, employees, or representatives from further violation of the requirements of this chapter or the order or to require the carrier or its officers, agents, employees, or representatives to obey the requirements of this chapter or the order.

History: En. Sec. 14, Ch. 184, L. 1931; re-en. Sec. 3847.14, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-114(part); amd. Sec. 5, Ch. 104, L. 2015.

Cross-References

Injunctions, Title 27, ch. 19.

69-12-210. Complaints. (1) The commission may conduct investigations and hear complaints to determine whether a motor carrier has violated any of the commission's rules or orders or any provision of this chapter.

(2) Following an opportunity for hearing and upon a finding that a motor carrier has violated any of the commission's rules or orders or any provision of this chapter, the commission may suspend or revoke the motor carrier's certificate or impose any penalty provided for under 69-12-108.

History: En. Sec. 2, Ch. 156, L. 1993; amd. Sec. 11, Ch. 456, L. 2015.

Part 3
Classification and Motor Carrier Certificates

69-12-301. Classification of motor carriers. (1) Motor carriers are divided into three classes to be known as:

(a) Class A motor carriers;

(b) Class D motor carriers; and

(c) Class E motor carriers.

(2) Class A motor carriers include all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class D motor carriers include all motor carriers operating motor vehicles transporting garbage.

(4) Class E motor carriers include all transportation network carriers.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 3, Ch. 341, L. 1991; amd. Sec. 5, Ch. 481, L. 1991; amd. Sec. 5, Ch. 364, L. 1993; amd. Sec. 10, Ch. 358, L. 1995; amd. Sec. 12, Ch. 456, L. 2015; amd. Sec. 4, Ch. 512, L. 2021; amd. Sec. 4, Ch. 422, L. 2023.

Cross-References

Fees, 69-12-423.

69-12-302. Repealed. Sec. 15, Ch. 422, L. 2023.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 1, Ch. 24, L. 1979; amd. Sec. 1, Ch. 393, L. 1987; amd. Sec. 1, Ch. 203, L. 1991; amd. Sec. 2, Ch. 341, L. 1991.

69-12-303 through 69-12-310 reserved.

69-12-311. Class A motor carrier certificate. (1) (a) A Class A motor carrier may not transport persons for hire on any public highway in this state without obtaining, pursuant to this chapter, a certificate of compliance.

(b) A Class A motor carrier may not transport property or persons and property for hire on any public highway in this state without obtaining, pursuant to this chapter, a certificate of public convenience and necessity.

(2) A Class A motor carrier shall apply for a certificate, in writing, separately for each route. The application must be verified by the applicant and specify the following:

(a) the name and address of the applicant and its officers, if any;

(b) the public highway or highways and the fixed termini between the regular route or routes where the applicant intends to operate;

(c) a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity;

(d) the proposed time schedule;

(e) a proposed schedule of the tariff or rates to be charged;

(f) a complete and detailed description of the property proposed to be devoted to the public service;

(g) a detailed statement showing the assets and liabilities of the applicant; and

(h) other information required by the commission.

(3) The application must be accompanied by a filing fee to be set by rule of the commission.

History: En. Sec. 8, Ch. 184, L. 1931; re-en. Sec. 3847.8, R.C.M. 1935; amd. Sec. 22, Ch. 121, L. 1965; amd. Sec. 1, Ch. 243, L. 1974; amd. Sec. 1, Ch. 472, L. 1977; R.C.M. 1947, 8-108; amd. Sec. 11, Ch. 588, L. 1983; amd. Sec. 1, Ch. 35, L. 2013; amd. Sec. 13, Ch. 456, L. 2015.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Suspension of certificate by petition, 69-12-404.
Fees, 69-12-423.

69-12-312. Repealed. Sec. 17, Ch. 512, L. 2021.

History: En. Sec. 9, Ch. 184, L. 1931; re-en. Sec. 3847.9, R.C.M. 1935; amd. Sec. 23, Ch. 121, L. 1965; amd. Sec. 2, Ch. 243, L. 1974; amd. Sec. 2, Ch. 472, L. 1977; R.C.M. 1947, 8-109; amd. Sec. 12, Ch. 588, L. 1983; amd. Sec. 2, Ch. 35, L. 2013; amd. Sec. 14, Ch. 456, L. 2015.

69-12-313. Repealed. Sec. 2, Ch. 163, L. 2023; sec. 15, Ch. 422, L. 2023.

History: (1) thru (3)En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 472, L. 1977; Sec. 8-110, R.C.M. 1947; (4)En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; R.C.M. 1947, 8-110(1), 8-111(part); amd. Sec. 13, Ch. 588, L. 1983; amd. Sec. 15, Ch. 456, L. 2015.

69-12-314. Class D motor carrier certificate of public convenience and necessity. (1) Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the commodities described in 69-12-301(3). Class D carriers, when applying for a new or additional certificate of public convenience and necessity, shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class D motor carrier certificate of public convenience or necessity or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation of garbage on a regular basis as part of the motor carrier's usual business operation.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 1, Ch. 387, L. 1979; amd. Sec. 258, Ch. 42, L. 1997; amd. Sec. 16, Ch. 456, L. 2015; amd. Sec. 5, Ch. 512, L. 2021; amd. Sec. 5, Ch. 422, L. 2023.

Cross-References

Required records and reports, 69-12-407.
Fees, 69-12-423.

69-12-315. Repealed. Sec. 10, Ch. 364, L. 1993.

History: En. Secs. 6, 9, Ch. 481, L. 1991.

69-12-316 through 69-12-320 reserved.

69-12-321. Hearing on application for motor carrier certificate. (1) (a) Upon the filing of an application for a certificate by a Class A, Class D, or Class E motor carrier or upon the filing of a request for a transfer of authority, the commission shall provide notice of the application to any interested party.

(b) If a protest or a request for hearing is received, the commission shall fix a time and place for a hearing on the application. The hearing must be set for not later than 90 days after receipt of a protest or a hearing request. If a protest or a request for hearing is not received, the commission may act on the application without a hearing as prescribed by commission rules.

(c) A protest related to an application by a motor carrier pursuant to 69-12-311(1)(a) or by a Class E motor carrier is limited to a protest of the motor carrier's ability to meet the requirements of 69-12-323(5).

(2) A motor carrier referred to in 69-12-322, the department of transportation, the governing board or boards of any county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) An application by a motor carrier pursuant to 69-12-311(1)(b) or by a Class D motor carrier for a certificate of public convenience and necessity may be denied without a public hearing when the records of the commission demonstrate that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service. A hearing must be held if the applicant presents facts demonstrating that conditions over the route or in the territory and affecting transportation facilities have materially changed since the previous public investigation and finding and that public convenience and necessity now require the motor carrier operation.

History: **Ap. p. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-111.1, R.C.M. 1947; Ap. p. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; R.C.M. 1947, 8-111(part), 8-111.1(part); amd. Sec. 1, Ch. 25, L. 1979; amd. Sec. 1, Ch. 55, L. 1979; amd. Sec. 14, Ch. 588, L. 1983; amd. Sec. 11, Ch. 481, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 364, L. 1993; amd. Sec. 17, Ch. 456, L. 2015; amd. Sec. 6, Ch. 512, L. 2021; amd. Sec. 6, Ch. 422, L. 2023; amd. Sec. 1, Ch. 59, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 59, L. 2025. Amendment effective July 1, 2025.

69-12-322. Notice of hearing. (1) Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the commission shall serve a copy of the petition and notice of hearing upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of the certificate and shall notify any other affected party at least 10 days before the date of hearing.

(2) Notice of the hearing must be published in appropriate newspapers determined by the commission to have sufficient statewide circulation in the case of applications for Class A authority.

History: **En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; R.C.M. 1947, 8-111(part); amd. Sec. 2, Ch. 55, L. 1979; amd. Sec. 12, Ch. 481, L. 1991; amd. Sec. 7, Ch. 364, L. 1993; amd. Sec. 7, Ch. 512, L. 2021; amd. Sec. 7, Ch. 422, L. 2023.**

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-12-323. Decision on application. (1) (a) Except as provided in subsection (1)(b), within 180 days from the date of the completed filing of an application, the commission shall issue its finding, order, or decision on the application and the evidence presented in support of the application at the time of the hearing.

(b) The commission may extend the time for making a decision to a date requested by the applicant.

(2) (a) If after a hearing on the request for a certificate of public convenience and necessity the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part of the service proposed, a certificate of public convenience and necessity must be issued. In determining whether a certificate of public convenience and necessity should be issued, the commission shall consider:

(i) the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency;

(ii) the likelihood of the proposed service being permanent and continuous throughout 12 months of the year; and

(iii) the effect that the proposed transportation service may have on other forms of transportation service that are essential and indispensable to the communities to be affected by the proposed transportation service or that might be affected by the proposed transportation service.

(b) For the purposes of issuing a certificate of public convenience and necessity to a Class D motor carrier, a determination of public convenience and necessity may include a consideration of competition.

(3) The commission may issue the certificate as requested in the application or in part and may attach terms and conditions to a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-311(1)(b) or a Class D motor carrier that in its judgment public convenience and necessity require.

(4) If a certificate is issued to a motor carrier as provided in this part, the certificate is in effect until terminated by the commission for cause or until terminated by the owner's failure to comply with 69-12-402.

(5) (a) In determining whether to approve a certificate of compliance for a motor carrier pursuant to 69-12-311(1)(a) or for a Class E motor carrier, the commission shall consider only whether the applicant meets the requirements of 69-12-415. The commission shall provide notice and may require a hearing in accordance with 69-12-321.

(b) An applicant seeking a certificate of compliance establishes a rebuttable presumption that it meets the requirements of 69-12-415 by demonstrating compliance with insurance, bonding, and security requirements established by the commission in accordance with 69-12-402.

History: (1)En. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-111.1, R.C.M. 1947; (2)En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; (3)En. Sec. 12, Ch. 184, L. 1931; re-en. Sec. 3847.12, R.C.M. 1935; Sec. 8-112, R.C.M. 1947; R.C.M. 1947, 8-111(part), 8-111.1(part), 8-112(part); amd. Sec. 1, Ch. 54, L. 1979; amd. Sec. 1, Ch. 76, L. 1983; amd. Sec. 18, Ch. 456, L. 2015; amd. Sec. 8, Ch. 512, L. 2021; amd. Sec. 8, Ch. 422, L. 2023.

Cross-References

Revocation of certificate, 69-12-327.

69-12-324. Special provisions when federal or state contract involved. (1) A written contract presented to the commission is sufficient proof that a motor carrier pursuant to 69-12-311(1)(a) or a Class E motor carrier meets the requirements for a certificate of compliance or that a motor carrier pursuant to 69-12-311(1)(b) or a Class D motor carrier meets the requirements for a certificate of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. Subject to the provisions of this section, a transportation movement is considered to be:

(a) the transportation for hire of persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department of the United States; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department of the state.

(2) The certificate issued pursuant to the terms of the United States government or state government contract is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the motor carrier is the motor carrier authorized to operate under the United States government or state government contract.

History: En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 476, L. 1977; R.C.M. 1947, 8-110(2); amd. Sec. 15, Ch. 588, L. 1983; amd. Sec. 2, Ch. 178, L. 1985; amd. Sec. 19, Ch. 456, L. 2015; amd. Sec. 9, Ch. 512, L. 2021; amd. Sec. 9, Ch. 422, L. 2023.

Cross-References

Waste and litter control, Title 75, ch. 10.

69-12-325. Transfer of certificate or privilege. Any right, privilege, or certificate held, owned, or obtained by any motor carrier may be sold, assigned, leased, transferred, and inherited as other property only by the authorization of the commission.

History: En. Sec. 12, Ch. 184, L. 1931; re-en. Sec. 3847.12, R.C.M. 1935; R.C.M. 1947, 8-112(part).

69-12-326. Lease of certificate. (1) An authorized carrier operating within the state may lease its certificate or any integral segment thereof to another carrier only by approval of the commission. The contract or lease under which the certificate is leased must be in writing and approved by the commission prior to any operation under the certificate. The contract or lease must specify:

(a) the period for which a certificate is to be leased, which shall not be less than 30 days;

(b) the compensation to be paid;

(c) the time or date upon which the lease will commence and terminate; and

(d) the signatures of the parties thereto.

(2) Operation under the certificate is prohibited until approved by the commission in writing. During the period of the contract or lease, transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner (lessor) are prohibited.

History: En. 8-103.3 by Sec. 1, Ch. 107, L. 1969; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103.3.

69-12-327. Revocation of certificate — right of review. (1) If it appears that a certificate holder is violating or refusing to observe any of the commission's orders or rules or any provision of Title 69, as amended, the commission may issue an order to the certificate holder to show cause why the certificate should not be revoked. If the certificate holder fails to appear to show cause as ordered by the commission, the certificate may be revoked without a hearing. If the holder does appear to show cause, the commission may:

(a) dismiss the proceeding, notifying the holder that the certificate is not revoked; or

(b) hold a hearing on the question of revocation, notifying the holder of the time and place for the hearing.

(2) The holder of any such certificate or privilege shall have all rights of rehearing and review as to such order of the commission as is provided in this chapter.

History: En. Sec. 7, Ch. 184, L. 1931; re-en. Sec. 3847.7, R.C.M. 1935; R.C.M. 1947, 8-107; amd. Sec. 1, Ch. 31, L. 1979.

Cross-References

Effect of failure to pay compensation, fees, or charges, 69-12-422.

69-12-328. Repealed. Sec. 25, Ch. 456, L. 2015.

History: En. Sec. 3, Ch. 218, L. 2011.

69-12-329 and 69-12-330 reserved.

69-12-331. Repealed. Sec. 5, Ch. 35, L. 2013.

History: En. Sec. 1, Ch. 593, L. 1979; amd. Sec. 1, Ch. 173, L. 1991; amd. Sec. 24, Ch. 200, L. 1997.

69-12-332 reserved.

69-12-333. Repealed. Sec. 10, Ch. 364, L. 1993.

History: En. Sec. 7, Ch. 481, L. 1991.

69-12-334. Repealed. Sec. 10, Ch. 364, L. 1993.

History: En. Sec. 8, Ch. 481, L. 1991.

69-12-335. Repealed. Sec. 10, Ch. 364, L. 1993.

History: En. Sec. 10, Ch. 481, L. 1991.

69-12-336 through 69-12-339 reserved.

69-12-340. Class E motor carrier certificate of compliance. (1) A Class E motor carrier may not transport persons on a public highway in this state without obtaining, pursuant to this chapter, a certificate of compliance.

(2) A Class E motor carrier shall apply for a certificate of compliance in writing. The application must be verified by the applicant and specify the following:

(a) the name and address of the applicant and its officers, if any;

(b) the locality and character of operations to be conducted;

(c) a detailed statement showing the assets and liabilities of the applicant;

(d) a detailed statement that the applicant complies or, once certificated, will comply with the requirements of 69-12-323(5);

(e) other information required by the commission.

(3) A transportation network carrier may apply for a Class E certificate of compliance on behalf of the transportation network carrier drivers who register with the transportation network carrier to use its software or digital network to offer transportation network carrier services.

(4) The application must be accompanied by a filing fee to be set by rule of the commission.

(5) Notwithstanding subsection (3), a transportation network carrier does not own, control, operate, or manage the vehicles used by transportation network carrier drivers and is not a taxicab association or a for-hire vehicle owner.

History: En. Sec. 1, Ch. 456, L. 2015.

69-12-341. Fare charged for transportation network carrier services. (1) (a) A Class E motor carrier may charge a fare for the services provided to passengers in accordance with this section.

(b) If a fare is charged, the motor carrier shall:

(i) disclose to passengers the fare calculation method on its website or within the software application service; and

(ii) provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the transportation network carrier driver's vehicle.

(2) Within a reasonable period of time following the completion of a trip, a Class E motor carrier shall transmit to the passenger an electronic receipt that includes:

(a) the origin and destination of the trip;

(b) the total time and distance of the trip; and

(c) an itemization of the total fare paid.

History: En. Sec. 2, Ch. 456, L. 2015.

69-12-342. Authority. (1) Notwithstanding any other provision of law, transportation network carrier services are exclusively governed by this chapter and rules promulgated by the commission consistent with this chapter.

(2) A local government as defined in 2-2-102 may not impose a tax or fee on, require a license for, or impose any other operational requirements on transportation network carrier services.

History: En. Sec. 3, Ch. 456, L. 2015.

69-12-343. Insurance requirements of transportation network carriers. A transportation network carrier driver or transportation network carrier on the driver's behalf shall maintain primary motor vehicle liability insurance on the driver's personal vehicle that meets the following requirements:

(1) The insurance policy recognizes that the driver is a transportation network carrier driver or otherwise uses a personal vehicle to transport riders for compensation and covers the driver:

(a) while the driver is logged on to the transportation network carrier's digital network; or

(b) while the driver is engaged in a prearranged ride.

(2) (a) While a participating transportation network carrier driver is logged on to the transportation network carrier's digital network and is available to receive transportation requests but is not engaged in a prearranged ride, the motor vehicle liability insurance policy must provide:

(i) primary motor vehicle liability insurance in the amount of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and

(ii) uninsured motorist coverage when required by 33-23-201.

(b) The coverage requirements of subsection (2)(a) may be satisfied by any of the following:

(i) motor vehicle liability insurance maintained by the transportation network carrier driver;

(ii) motor vehicle liability insurance maintained by the transportation network carrier; or

(iii) any combination of subsections (2)(b)(i) and (2)(b)(ii).

(3) (a) While a transportation network carrier driver is engaged in a prearranged ride, the motor vehicle liability insurance policy must provide:

(i) primary motor vehicle liability insurance that provides at least $1,000,000 for death, bodily injury, and property damage; and

(ii) uninsured motorist coverage when required by 33-23-201.

(b) The coverage requirements of subsection (3)(a) may be satisfied by any of the following:

(i) motor vehicle liability insurance maintained by the transportation network carrier driver on the driver's personal vehicle;

(ii) motor vehicle liability insurance maintained by the transportation network carrier on the driver's personal vehicle; or

(iii) any combination of subsections (3)(b)(i) and (3)(b)(ii).

(4) If insurance maintained by the driver in subsection (2) or (3) has lapsed or does not provide the required limits of coverage, insurance maintained by a transportation network carrier must provide the coverage required by this section beginning with the first dollar of a claim and have the duty to defend such claim.

(5) Coverage under a motor vehicle liability insurance policy maintained by the transportation network carrier may not be dependent on a driver's personal motor vehicle liability insurer first denying a claim and a driver's personal motor vehicle liability insurance policy insurer may not be required to first deny a claim.

(6) Insurance required by this section may be placed with an insurer authorized under Title 33, including a surplus lines insurer.

(7) Insurance satisfying the requirements of this section satisfies mandatory insurance requirements in Title 61, chapter 6.

(8) A transportation network carrier driver shall carry proof of coverage satisfying subsections (2) and (3) at all times during the use of a personal vehicle in connection with a transportation network carrier's digital network. In the event of an accident, a transportation network carrier driver shall provide insurance coverage information to the directly interested parties, motor vehicle liability insurers, and investigating police officers upon request. Upon such request, a transportation network carrier driver shall also disclose to directly interested parties, motor vehicle liability insurers, and investigating police officers whether the driver was logged on to the transportation network carrier's digital network or engaged in a prearranged ride at the time of an accident.

History: En. Sec. 4, Ch. 456, L. 2015.

69-12-344. Disclosures. A transportation network carrier shall disclose in writing to a transportation network carrier driver the following before the driver is allowed to accept a request for a prearranged ride on the transportation network carrier's digital network:

(1) the insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network carrier provides while the transportation network carrier driver uses a personal vehicle in connection with a transportation network carrier's digital network; and

(2) that the transportation network carrier driver's own motor vehicle liability insurance policy might not provide any liability or optional coverages while the driver is logged on to the transportation network carrier's digital network and is available to receive transportation requests or is engaged in a prearranged ride, depending on its terms.

History: En. Sec. 5, Ch. 456, L. 2015.

69-12-345. Motor vehicle liability insurance provisions. (1) Insurers that write motor vehicle liability insurance in Montana may exclude any and all coverage afforded under the owner's insurance policy for any loss or injury that occurs while a driver is logged on to a transportation network carrier's digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in a motor vehicle liability insurance policy, including but not limited to:

(a) liability coverage for bodily injury and property damage including insurance required under Title 61, chapter 6;

(b) personal injury protection coverage;

(c) uninsured and underinsured motorist coverage, including insurance provided under 33-23-201;

(d) medical payments coverage;

(e) comprehensive physical damage coverage; and

(f) collision physical damage coverage.

(2) Nothing in this section requires that a personal motor vehicle liability insurance policy provide coverage while the driver is logged on to the transportation network carrier's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. An insurer may provide coverage for the transportation network carrier driver's personal vehicle, if it chooses to do so, by contract or endorsement.

(3) A motor vehicle liability insurer that excludes the coverage described in 69-12-343 has no duty to defend or indemnify any claim expressly excluded. Sections 69-12-343 through 69-12-345 do not invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use prior to the enactment of 69-12-343 through 69-12-345. A motor vehicle liability insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its motor vehicle liability policy has a right of contribution against other insurers that provide motor vehicle liability insurance to the same driver in satisfaction of the coverage requirements of 69-12-343 at the time of loss.

(4) In a claims coverage investigation, transportation network carriers and any insurer potentially providing liability or optional coverages under 69-12-343 shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the transportation network carrier driver, if applicable, including the precise times that a transportation network carrier driver logged on and off the transportation network carrier's digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions, and limits provided under any motor vehicle liability insurance maintained under 69-12-343.

(5) Nothing in this chapter limits the right of a lender or secured party on a driver's vehicle to require a driver to maintain comprehensive and collision damage coverage for a driver's vehicle or to show evidence of that coverage to the lender or secured party that would cover the period when the driver is logged on to the transportation network carrier's digital network regardless of whether the driver is engaged in a prearranged ride. If the driver fails to maintain the required comprehensive and collision coverage or to show evidence to the lender or secured party of the coverage upon reasonable request by the lender or secured party, the lender or secured party may obtain the coverage at the expense of the driver and is not required to provide disclosure under 69-12-344.

(6) If a lender or a secured party has a secured interest in a driver's vehicle and a transportation network carrier's insurer makes a payment for a claim for damage to the driver's vehicle that is covered under comprehensive or collision damage coverage held by the transportation network carrier, the insurer shall issue the payment directly to the vehicle repair shop or jointly to the owner of the vehicle and the primary lender or secured party on the covered vehicle.

History: En. Sec. 6, Ch. 456, L. 2015.

Part 4
Requirements for Motor Carriers

69-12-401. Compliance with state law. It is unlawful for any corporation or person or the corporation's or person's officers, agents, employees, or servants to operate any motor vehicle for the transportation of persons or property for hire on any public highway in this state except in accordance with the provisions of this chapter.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(b); amd. Sec. 2029, Ch. 56, L. 2009.

Cross-References

Classification of highways, 60-1-201.

69-12-402. Compliance with commission rules. No certificate shall be issued or remain in force unless the holder thereof shall comply with such rules of the commission as it shall adopt governing the filing of bonds, policies of insurance, or such security or agreement in such form and adequate amount and conditioned as the commission may require for:

(1) the prompt payment of all compensation or fees due the state under the provisions of this chapter; and

(2) the payment of any final judgment which may be rendered against any such motor carrier arising out of the death of or injury to any passenger or injury to other persons or property as a result of any negligent operation of the motor vehicles or such motor carrier, with power in the commission to permit self-insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

History: En. Sec. 13, Ch. 184, L. 1931; re-en. Sec. 3847.13, R.C.M. 1935; R.C.M. 1947, 8-113.

Cross-References

Liability, Title 27, ch. 1, part 7.

Suretyship, Title 28, ch. 11, part 4.

Motor vehicle financial responsibility, Title 61, ch. 6, part 1.

69-12-403. Discontinuance of service. A Class A motor carrier may not abandon or discontinue any service established under this chapter without an order of the commission.

History: En. Sec. 5, Ch. 184, L. 1931; re-en. Sec. 3847.5, R.C.M. 1935; R.C.M. 1947, 8-105; amd. Sec. 10, Ch. 512, L. 2021.

69-12-404. Suspension of certificate by petition. (1) (a) A motor carrier may petition the commission in writing to suspend its certificate for a period not to exceed 6 months. Only one additional 6-month suspension may be requested and granted.

(b) The suspension of a certificate of public convenience and necessity requested by a motor carrier pursuant to 69-12-311(1)(b) or by a Class D motor carrier may be granted upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation.

(2) (a) The suspension of a certificate of compliance for a motor carrier pursuant to 69-12-311(1)(a) or for a Class E motor carrier as provided for in subsection (1) for a period of 12 consecutive months automatically terminates a certificate of compliance and requires a motor carrier pursuant to 69-12-311(1)(a) or a Class E motor carrier to reapply for a certificate of compliance.

(b) The suspension of a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-311(1)(b) or a Class D motor carrier as provided in subsection (1) for a period of 12 consecutive months establishes a prima facie presumption of absence of public convenience and necessity. If after notice and hearing the motor carrier pursuant to 69-12-311(1)(b) or the Class D motor carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission may cancel a certificate of public convenience and necessity.

History: (1)En. 8-107.1 by Sec. 1, Ch. 173, L. 1973; Sec. 8-107.1, R.C.M. 1947; (2)En. 8-107.2 by Sec. 1, Ch. 236, L. 1973; Sec. 8-107.2, R.C.M. 1947; R.C.M. 1947, 8-107.1, 8-107.2; amd. Sec. 20, Ch. 456, L. 2015; amd. Sec. 11, Ch. 512, L. 2021; amd. Sec. 10, Ch. 422, L. 2023.

69-12-405. Repealed. Sec. 12, Ch. 358, L. 1995.

History: Ap. p. Sec. 2, Ch. 275, L. 1971; Sec. 8-101.1, R.C.M. 1947; Ap. p. Sec. 3, Ch. 275, L. 1971; amd. Sec. 1, Ch. 233, L. 1973; amd. Sec. 2, Ch. 315, L. 1974; Sec. 8-101.2, R.C.M. 1947; R.C.M. 1947, 8-101.1, 8-101.2.

69-12-406. Restriction on transportation of certain waste. Except as provided in 69-12-324, a Class A or Class E motor carrier may not be authorized or permitted to transport garbage within the state. This restriction does not apply to recyclables.

History: En. 8-102.1 by Sec. 2, Ch. 138, L. 1977; R.C.M. 1947, 8-102.1(part); amd. Sec. 16, Ch. 588, L. 1983; amd. Sec. 4, Ch. 341, L. 1991; amd. Sec. 259, Ch. 42, L. 1997; amd. Sec. 21, Ch. 456, L. 2015; amd. Sec. 12, Ch. 512, L. 2021; amd. Sec. 11, Ch. 422, L. 2023.

Cross-References

Waste and litter control, Title 75, ch. 10.

69-12-407. Records and reports. (1) All records, books, accounts, and files of a Class A and Class D motor carrier in this state, as they relate to the business of transportation conducted by the motor carrier, must at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of Class A and Class D motor carriers. A motor carrier authorized to operate in accordance with the provisions of this chapter shall keep its records, books, and accounts according to the uniform system to the extent possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, a motor carrier authorized to engage in business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission.

(3) In addition to other reporting requirements, a Class D motor carrier shall provide sufficient information to the commission to show that the carrier is entitled to possess the Class D motor carrier certificate of public convenience and necessity under the requirements of 69-12-314.

(4) (a) To ensure safety with respect to transportation network carrier drivers affiliated with Class E motor carriers, the commission may conduct audits of a Class E motor carrier, but not more than twice annually.

(b) A Class E motor carrier shall, upon request from the commission, provide to the commission up to 1,000 unique identification numbers, each of which has been assigned by the motor carrier to an individual transportation network carrier driver affiliated with the motor carrier.

(c) The commission may request from the Class E motor carrier copies of records held by the motor carrier for up to 10 of the motor carrier's drivers, who may be identified in the request only by the driver's unique identification number.

(d) The Class E motor carrier shall comply with the request in an electronic format acceptable to the commission within 1 business day after receiving the request.

(e) The Class E motor carrier may redact the records provided to the commission under subsection (4)(d) to protect the individual privacy of the transportation network carrier's drivers, including information that could be used to identify a driver. Information that a Class E motor carrier may redact includes but is not limited to the transportation network carrier driver's name, address, and social security number, other than the last four digits.

(5) Except as required by Article II, section 9 or 10, of the Montana constitution, the records obtained by the commission under subsection (4) may not be publicly disclosed by the commission.

History: **En. Sec. 18, Ch. 184, L. 1931; re-en. Sec. 3847.18, R.C.M. 1935; amd. Sec. 1, Ch. 232, L. 1973; amd. Sec. 4, Ch. 472, L. 1977; R.C.M. 1947, 8-118; amd. Sec. 1, Ch. 353, L. 1979; amd. Sec. 2, Ch. 387, L. 1979; amd. Sec. 13, Ch. 481, L. 1991; amd. Sec. 8, Ch. 364, L. 1993; amd. Sec. 3, Ch. 35, L. 2013; amd. Sec. 22, Ch. 456, L. 2015; amd. Sec. 13, Ch. 512, L. 2021; amd. Sec. 12, Ch. 422, L. 2023.**

Cross-References

Fees, 69-12-423.

69-12-408. Identification of ownership of certain large motor vehicles. (1) A person may not operate a motor vehicle or combination of vehicles having a gross weight of more than 10,000 pounds upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis unless the name or trade name, city, and state or the name or trade name and the public service commission or department of transportation number is displayed on both sides of each vehicle operated under its own power, either alone or in combination. If a number is displayed, it must be the number of the person or corporation under whose jurisdiction the vehicle or vehicles are being operated.

(2) The display must be in letters in sharp contrast to the background and in a size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is not in motion. The display must be maintained so that it remains legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device prepared so that it meets the identification and legibility requirements of this section.

(3) This section does not apply to:
(a) farm vehicles; or
(b) motor vehicles being:
(i) transported to dealers from point of manufacture;
(ii) transported from one dealer to another;
(iii) demonstrated to a prospective buyer; or
(iv) delivered to a buyer from a dealer or a manufacturer.

History: **(1)En. Sec. 1, Ch. 133, L. 1963; Sec. 53-801, R.C.M. 1947; (2)En. Sec. 2, Ch. 133, L. 1963; Sec. 53-802, R.C.M. 1947; (3)En. Sec. 3, Ch. 133, L. 1963; Sec. 53-803, R.C.M. 1947; R.C.M. 1947, 53-801, 53-802, 53-803; amd. Sec. 1, Ch. 160, L. 1991; amd. Sec. 4, Ch. 35, L. 2013; amd. Sec. 10, Ch. 89, L. 2021.**

Cross-References

Gross vehicle weight licensing requirements, Title 61, ch. 10, part 2.

69-12-409 through 69-12-414 reserved.

69-12-415. Carrier fitness. A certificate may not be issued or remain in force unless the certificate holder is fit, willing, and able to perform the authorized service and conforms to the provisions of this chapter and the rules and orders of the commission.

History: En. Sec. 1, Ch. 156, L. 1993; amd. Sec. 23, Ch. 456, L. 2015.

Cross-References

Certificate defined, 69-12-101.

69-12-416 through 69-12-420 reserved.

69-12-421. Annual fee for motor carriers. (1) Except as provided in subsection (2), in addition to all of the licenses, fees, or taxes imposed upon motor vehicles in this state and in consideration of the use of the public highways of this state, every motor carrier shall, at the time of the issuance of a certificate and annually thereafter, on or between October 1 and the following January 31, pay to the public service commission of Montana a fee set by rule of the commission for every motor vehicle operated by the carrier over or upon the public highways of this state.

(2) (a) A motor carrier engaged in seasonal operations only, where its operations do not extend continuously over a period of not to exceed 6 months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half of the compensation and fees herein provided.

(b) The compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The commission shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

History: En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; R.C.M. 1947, 8-116(a); amd. Sec. 17, Ch. 588, L. 1983.

Cross-References

Operation of municipal busline, 7-14-4403.

Motor vehicle taxes and fees, Title 61, ch. 3, part 5.

69-12-422. Effect of failure to pay compensation, fees, or charges. (1) Upon the failure of any motor carrier to pay such compensation when due, the commission may in its discretion revoke the carrier's certificate or privilege, and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(2) All compensation, fees, or charges imposed and accruing under the provisions of this chapter shall be a lien upon all property of the motor carrier used in its operations under this chapter. Said lien shall attach at the time the compensation, fees, or charges become due and payable and shall have the effect of an execution duly levied on such property of the motor carrier and shall so remain until said compensation, fees, or charges are paid or the property sold for the payment thereof.

History: En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; R.C.M. 1947, 8-116(c), (d).

Cross-References

Operation of municipal busline, 7-14-4403.

Lien of carrier, 30-7-307.

Enforcement of carrier's lien, 30-7-308.

Revocation of certificate, 69-12-327.

Liens, Title 71, ch. 3.

69-12-423. Fees to be charged by commission. (1) The public service commission may, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, applications, and supplements not provided by law to be furnished free of charge.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing such notice as may be required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; re-en. Sec. 3847.26, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5, Ch. 472, L. 1977; R.C.M. 1947, 8-126(part); amd. Sec. 2, Ch. 500, L. 1979; amd. Sec. 18, Ch. 588, L. 1983.

Cross-References

Fees, 69-1-114.

Part 5

Ratemaking Requirements

69-12-501. Rate schedules to be maintained. (1) A Class A motor carrier issued a certificate shall maintain on file with the commission, if applicable, a full and complete schedule of its rates, fares, charges, classifications, and rules of service and any and all tariff provisions relating to rates, fares, charges, classifications, or rules. A schedule on file and approved on March 7, 1961, remains in full force and effect until changed or modified by the commission or by the carrier with the approval of the commission.

(2) A change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service may not be made by a motor carrier without first obtaining the approval of the commission. The commission shall prescribe rules providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of schedules and tariffs.

History: En. Sec. 2, Ch. 201, L. 1961; R.C.M. 1947, 8-104.2; amd. Sec. 24, Ch. 456, L. 2015; amd. Sec. 14, Ch. 512, L. 2021.

69-12-502. Prohibition on deviation from rate schedules. It is unlawful for any Class A motor carrier to charge, demand, receive, or collect any greater or less rate, charge, or fare than that fixed by the commission for the transportation service provided. It is also unlawful for any Class A motor carrier to refund or remit, in any manner or by any device, any portion of the rates, fares, and charges required to be collected under the schedule of the Class A carrier on file with the commission.

History: En. Sec. 3, Ch. 201, L. 1961; R.C.M. 1947, 8-104.3; amd. Sec. 15, Ch. 512, L. 2021; amd. Sec. 13, Ch. 422, L. 2023.

69-12-503. Rates to be reasonable and nondiscriminatory. (1) All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and nondiscriminatory. No motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, corporation, locality, or description of traffic, nor shall such motor carrier subject any particular person, company, corporation, locality, or description of traffic to any prejudice or disadvantage in any respect. Nothing herein provided shall prevent the commission from authorizing different rates or schedules of rates for service between the same places or between different points of origin and/or destination within the same places when such different rates are justified by the differing character of service to be rendered by the carrier to a shipper or consignee.

(2) The commission may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier. If the commission shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscriminatory and it shall order the affected motor carrier or carriers to conform to such modified schedule. Each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the commission.

History: En. Sec. 4, Ch. 201, L. 1961; amd. Sec. 2, Ch. 182, L. 1971; R.C.M. 1947, 8-104.4.

Cross-References

Illegal discrimination, Title 49, ch. 2.

69-12-504. Procedure to revise rate schedule. (1) No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the commission. Such changes or revisions shall be made by filing with the commission the tariff sheet or sheets containing such changes or revisions, plainly stating the changes or revisions to be made, and by submitting at the same time testimony and exhibits supporting the requested change or revision and prepared by the motor carrier. Additional testimony or exhibits may be submitted before or during the hearing provided for in 69-12-505 and may be submitted after the hearing with the approval of the commission. The public shall be provided with such notice of the proposed changes or revisions as the commission shall, by rule, require.

(2) The tariff sheets containing changes or revisions shall be filed with the commission at least 45 days before the proposed effective date. The change or revision shall be effective on the stated effective date unless disallowed or suspended by the commission prior to this date. However, the commission may, for good cause, allow any change or revision to become effective on less than 45 days' notice.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973; R.C.M. 1947, 8-104.5(part); amd. Sec. 1, Ch. 94, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-12-505. Suspension of proposed rate revision — hearing. (1) Upon its own initiative or upon the complaint of any interested party filed with the commission within 20 days after the date upon which a change or revision of any rate, fare, charge, or classification is filed with the commission, the commission may suspend the operation of such rate, fare, charge, or classification for a period not to exceed 180 days. The order directing such suspension must be issued by the commission not less than 2 business days prior to the proposed effective date. The motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party, mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent, and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff.

(2) (a) If all the protests are withdrawn and the commission finds the proposed increase justified, the commission may vacate the suspension and permit the proposed rates to become effective without a public hearing.

(b) Unless the suspension has been vacated, whenever the suspension of any proposed change or revision in a tariff is ordered by the commission, it shall also order a public hearing to consider the reasonableness of the proposed change or revision. Due notice shall be given for such hearing to all known interested or affected persons, and the same shall be allowed to appear and present evidence. Additional prepared testimony may be presented before or during the hearing and may also be submitted after the hearing with the permission of the commission.

(3) After considering the evidence presented at such hearing, the commission shall issue an order approving, denying, or modifying the proposed change or revision. Unless such hearing is held and such order is issued within 180 days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973; R.C.M. 1947, 8-104.5(part); amd. Sec. 1, Ch. 89, L. 1979.

69-12-506 through 69-12-510 reserved.

69-12-511. Procedure to recover excess charges. (1) Any sum or amount of money paid to any motor carrier in excess of the rates, fares, or charges established for such service by the commission may be recovered from such carrier by the person or shipper who paid the same in any action brought in the district court of the county in which such payment was made. Any such action must be brought within 2 years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and any motor carrier shall be admissible in evidence for the purpose of showing a waiver of the right given by this section.

(2) If upon the trial of such action it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 6, Ch. 201, L. 1961; R.C.M. 1947, 8-104.6.

Cross-References

Costs, Title 25, ch. 10.

Part 6
Carrier Agreements (Repealed)

69-12-601. Repealed. Sec. 3, Ch. 163, L. 2023.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(1), (2).

69-12-602. Repealed. Sec. 3, Ch. 163, L. 2023.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(3) thru (5).

69-12-603. Repealed. Sec. 3, Ch. 163, L. 2023.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(6).

69-12-604. Repealed. Sec. 3, Ch. 163, L. 2023.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(7).

69-12-605. Repealed. Sec. 3, Ch. 163, L. 2023.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(8), (9).

69-12-606 through 69-12-610 reserved.

69-12-611. Repealed. Sec. 3, Ch. 163, L. 2023.

History: En. 8-103.1 by Sec. 1, Ch. 105, L. 1969; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103.1; amd. Sec. 2, Ch. 352, L. 1979; amd. Sec. 1, Ch. 409, L. 1983; amd. Sec. 1, Ch. 190, L. 1985; amd. Sec. 14, Ch. 481, L. 1991; amd. Sec. 9, Ch. 364, L. 1993; amd. Sec. 16, Ch. 512, L. 2021.

69-12-612. Repealed. Sec. 5, Ch. 35, L. 2013.

History: En. 8-103.2 by Sec. 1, Ch. 106, L. 1969; R.C.M. 1947, 8-103.2.

CHAPTER 13
PIPELINE CARRIERS

Part 1 — General Provisions

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69-13-102. Scope of chapter — enforcement.
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69-13-301. Records and reports.
69-13-302. Connection and interchange facilities.
69-13-303. Prohibition of discrimination in rates or service.

Chapter Cross-References

Annual report to Department of Revenue, 15-23-301.
Relocation of utilities' facilities, 60-4-402.
Montana Major Facility Siting Act, Title 75, ch. 20.

Part 1
General Provisions

69-13-101. Common carrier pipeline — definition. (1) A person, firm, corporation, limited partnership, joint-stock association, or association is a common carrier if it engages in:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide to or for the public for hire or engaging in the business of transporting crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide to or for the public for hire when the pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide when the pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within this state to any distributing, refining, or marketing center or reshipping point within this state of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide bought from others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

(2) For the purposes of this chapter, "plant or facility that produces or captures carbon dioxide" has the meaning provided for in 15-6-158.

(3) The provisions of this chapter do not apply to:

(a) pipelines that are limited in their use to the wells, stations, plants, and refineries of the owner and that are not a part of the pipeline transportation system of any common carrier; or

(b) any property of a common carrier that is not a part of or necessarily incident to its pipeline transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R.C.M. 1921; re-en. Sec. 3848, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1955; amd. Sec. 1, Ch. 170, L. 1963; R.C.M. 1947, 8-201; amd. Sec. 1, Ch. 231, L. 2009; amd. Sec. 1, Ch. 44, L. 2013.

69-13-102. Scope of chapter — enforcement. (1) It is declared that the operation of pipelines to which this chapter applies for the transportation of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide, in connection with the purchase or purchase and sale of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide, is a business in which the public is interested and is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide, using in connection with that business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide, may not be conducted unless the pipeline used in connection with that business is a common carrier within the purview of this chapter and subject to the jurisdiction conferred upon the commission.

(2) It is the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: **En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R.C.M. 1921; re-en. Sec. 3849, R.C.M. 1935; amd. Sec. 2, Ch. 190, L. 1955; amd. Sec. 2, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-202; amd. Sec. 2, Ch. 231, L. 2009; amd. Sec. 2, Ch. 44, L. 2013.**

Cross-References

Attorney General, Title 2, ch. 15, part 5.
Injunctions, Title 27, ch. 19.
Investigatory and enforcement authority of Public Service Commission, 69-13-203.

69-13-103. Right to construct pipelines. (1) The right to lay, maintain, and operate pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such lines, or along, across, or under any public stream or highway in this state is hereby conferred upon all persons, firms, limited partnerships, joint-stock associations, or corporations coming within any of the definitions of common carrier pipelines as hereinbefore made. This right to run along, across, or over any public road or highway, as provided for, can only be exercised upon condition that the traffic thereon not be interfered with and that such road or highway be promptly restored to its former condition of usefulness. The restoration of the road or highway is subject also to the supervision of the county commissioners of the county in which said highway is situated.

(2) Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state by filing with the commission an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the right so acquired, it shall be and become a common carrier pipeline, subject to the duties and obligations conferred or imposed in this chapter. In the exercise of the privileges herein conferred, such pipelines shall compensate the county for any damage done to such public road in the laying of pipelines or telegraph or telephone lines along or across the same. Nothing herein shall be construed to grant any pipeline company the right to use any public street or alley in any incorporated city or town except by express permission from the city or governing authority thereof.

History: **En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part).**

69-13-104. Use of power of eminent domain. Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this chapter that has filed with the commission its acceptance of the provisions of this chapter has the power of eminent domain. In the exercise of the power of eminent domain, the entity may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or authorization of the entity's common carrier pipeline. The power of eminent domain must be exercised as provided in Title 70, chapter 30.

History: **En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part); amd. Sec. 48, Ch. 125, L. 2001.**

Cross-References

Eminent domain, Title 70, ch. 30.

69-13-105. Violations. (1) Any common carrier as herein defined who shall violate any provisions of this chapter or who shall fail to perform any duty herein imposed or any valid order of the commission, when not stayed or suspended by order of court, shall be subject to a penalty of not less than $100 or more than $1,000 for each offense. Such penalty shall be recoverable at suit of the attorney general of Montana in the name of the state and for its use.

(2) For the willful violation of any of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents, or employees of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor. Each violation of any of such provisions shall be deemed a separate and distinct offense, and upon conviction thereof the party violating same shall be fined in a sum of not less than $50 or more than $1,000 and may be further punished by confinement in the county jail for not less than 10 days or more than 6 months.

(3) Actual damages may also be recovered by and for the use of any person, corporation, or association of persons against whom there shall have been an unlawful discrimination as herein

defined. Such suit shall be brought in the name of and for the use of party aggrieved and may be maintained in any court of proper jurisdiction, having due regard to the ordinary statutes of venue.

History: **En. Sec. 9, Ch. 8, Ex. L. 1921; re-en. Sec. 3856, R.C.M. 1921; re-en. Sec. 3856, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-209.**

Cross-References

Attorney General, Title 2, ch. 15, part 5.
Criminal responsibility of corporation, 45-2-311.
Accountability for conduct of corporation, 45-2-312.

69-13-106. Confidentiality of cultural sites. (1) The location of any heritage properties or paleontological remains on or beneath land, rights-of-way, or easements obtained for a common carrier pipeline is confidential and may not be disclosed by the entity owning, operating, or managing any common carrier pipeline.

(2) The provisions of subsection (1) do not prohibit a person or entity from disclosing the location of heritage properties or paleontological remains to the department of environmental quality for purposes of reviewing an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20. The department may not disclose information regarding the location of heritage properties or paleontological remains to the public.

(3) For purposes of this section, the following definitions apply:

(a) "Heritage property" has the meaning provided in 22-3-421.

(b) "Paleontological remains" has the meaning provided in 22-3-421.

History: **En. Sec. 1, Ch. 296, L. 2017.**

Part 2
Role of Commission

69-13-201. Establishment of rates and operating rules. (1) The commission may establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide by common carrier in this state and for the use of storage facilities necessarily incident to the transportation and may prescribe and enforce rules for the government and control of common carriers in respect to their pipelines and receiving, transferring, and loading facilities. The commission shall exercise the power upon petition by any person showing a substantial interest in the subject.

(2) An order establishing or prescribing rates and rules may not be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) If a rate is filed by any pipeline and a complaint against the rate or a petition to reduce the rate is filed by any shipper and is sustained, in whole or in part, all shippers who have paid the rates filed by the pipeline have the right to reparation or reimbursement of all excess in transportation charges paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of the complaint.

History: **En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R.C.M. 1921; re-en. Sec. 3851, R.C.M. 1935; amd. Sec. 3, Ch. 190, L. 1955; amd. Sec. 3, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-204; amd. Sec. 3, Ch. 231, L. 2009; amd. Sec. 3, Ch. 44, L. 2013.**

Cross-References

Hearings to be open, 69-3-104.

69-13-202. Assumption of validity of commission orders. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: **En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R.C.M. 1921; re-en. Sec. 3852, R.C.M. 1935; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-205(part).**

69-13-203. Investigatory and enforcement authority of commission. The commission shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: **En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R.C.M. 1921; re-en. Sec. 3853, R.C.M. 1935; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-206(part).**

Cross-References

Investigatory powers of Consumer Counsel, 69-2-203.
Enforcement by Attorney General, 69-13-102.

Part 3
Requirements for Pipeline Carriers

69-13-301. Records and reports. (1) Common carriers of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide shall make and publish their tariffs under rules that may be prescribed by the commission. The commission shall require the common carriers to make reports and may investigate their books and records kept in connection with the business.

(2) The commission shall require common carrier pipelines to make monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide owned by the pipelines, of the quantities held by them in storage for others, and of their unfilled storage capacity. Publicity may not be given by the commission to the reports as to stock of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making the reports and of their aggregate storage capacity.

History: **En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R.C.M. 1921; re-en. Sec. 3853, R.C.M. 1935; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-206(part); amd. Sec. 4, Ch. 231, L. 2009; amd. Sec. 4, Ch. 44, L. 2013.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-13-302. Connection and interchange facilities. (1) Each common carrier shall exchange crude petroleum tonnage, coal tonnage, petroleum or coal products tonnage, or carbon dioxide volume with each similar common carrier. The commission may require connections and facilities for the interchange of the tonnage and volume to be made at every locality reached by both pipelines whenever a necessity for the connections and facilities exists, subject to rates and regulations that may be made by the commission. Any common carrier under similar rules must be required to install and maintain facilities for the receipt and delivery at all points on the pipeline of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide.

(2) A carrier may not be required to receive or transport any crude petroleum, coal, or the products of crude petroleum or coal or any carbon dioxide from a plant or facility that produces or captures carbon dioxide except as may be marketable under rules prescribed by the commission. The commission shall make rules for the ascertainment of the amount of water and other foreign matter in crude petroleum, coal, or the products of crude petroleum or coal or in carbon dioxide from a plant or facility that produces or captures carbon dioxide tendered for transportation, for deduction for water and foreign matter, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The particular powers delegated to the commission in this section may not be construed to limit the general powers conferred by this chapter.

History: **En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R.C.M. 1921; re-en. Sec. 3852, R.C.M. 1935; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-205(part); amd. Sec. 5, Ch. 231, L. 2009; amd. Sec. 5, Ch. 44, L. 2013; amd. Sec. 29, Ch. 55, L. 2015.**

69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), a common carrier in its operations may not discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide. There may not be any discrimination in the transportation of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide when any of those products were produced or purchased by the common carrier directly or indirectly. In this connection the pipeline must be considered as a shipper of the crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide when any of those products were produced or purchased by the pipeline directly or indirectly and handled through its facilities. A carrier in the operation may not directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules that may be prescribed by the commission, every common carrier shall receive and transport crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide delivered to it for transportation and shall receive and transport any of those products and perform its other duties with respect to any of those products without discrimination.

(2) The provisions of subsection (1) do not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine. A carrier is not guilty of discrimination when obeying any order of the commission. When there is offered for transportation more crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide than can be immediately transported, the products must be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. A common carrier may not at any time be required to receive petroleum or petroleum products for shipments exceeding 3,000 barrels in any 1 day from any person, firm, corporation, or association of persons.

History: Ap. p. Sec. 7, Ch. 8, Ex. L. 1921; re-en. Sec. 3854, R.C.M. 1921; re-en. Sec. 3854, R.C.M. 1935; amd. Sec. 6, Ch. 190, L. 1955; amd. Sec. 6, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-207, R.C.M. 1947; Ap. p. Sec. 10, Ch. 8, Ex. L. 1921; re-en. Sec. 3857, R.C.M. 1921; re-en. Sec. 3857, R.C.M. 1935; amd. Sec. 7, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-210, R.C.M. 1947; R.C.M. 1947, 8-207, 8-210; amd. Sec. 6, Ch. 231, L. 2009; amd. Sec. 6, Ch. 44, L. 2013.

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CHAPTER 14
RAILROADS

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Assessment of railroads, 15-8-301, 15-8-407, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

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Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Relocation of utilities' facilities, 60-4-402.

Regulation of carriers, Title 60, ch. 11.

Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation, 60-11-111.

Penalty for interference with official railroad signs or signals, 61-8-713.

Eminent domain, Title 70, ch. 30.

Restriction on building railroad on public watershed, 75-6-112.

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Part 1
Role of Commission — Penalties

69-14-101. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1)En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3835, R.C.M. 1921; re-en. Sec. 3835, R.C.M. 1935; Sec. 72-157, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R.C.M. 1921; re-en. Sec. 3792, R.C.M. 1935; Sec. 72-114, R.C.M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974; Sec. 72-101.1, R.C.M. 1947; R.C.M. 1947, 72-101.1(part), 72-157; amd. Sec. 21, Ch. 43, L. 1979; amd. Sec. 21, Ch. 333, L. 1993.

69-14-102. Application — definition. (1) In accordance with the commission's authority pursuant to 69-14-111, this chapter applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state.

(2) As used in this chapter, "railroad" means a corporation, company, or individual owning or operating a railroad in whole or in part in this state. The term also includes express companies, sleeping-car companies, and a rail authority established under Title 7, chapter 14, part 16.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R.C.M. 1921; re-en. Sec. 3792, R.C.M. 1935; Sec. 72-114, R.C.M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974; R.C.M. 1947, 72-101.1(part); amd. Sec. 22, Ch. 43, L. 1979; amd. Sec. 6, Ch. 104, L. 2015.

69-14-103. Interpretation. This chapter shall not have the effect of releasing or waiving any right of action by the state or any person for any right, penalty, or forfeiture which may arise under any law of this state. All penalties accruing under this part are cumulative to each other, and a suit for or recovery of one is not a bar to the recovery of any other penalty.

History: En. Sec. 35, Ch. 37, L. 1907; Sec. 4398, Rev. C. 1907; re-en. Sec. 3817, R.C.M. 1921; re-en. Sec. 3817, R.C.M. 1935; R.C.M. 1947, 72-140; amd. Sec. 23, Ch. 43, L. 1979.

69-14-104. Violations of railroad laws — penalties. (1) If a railroad violates this chapter, fails or refuses to perform duties in accordance with this chapter, or fails, neglects, or refuses to act in accordance with commission requirements or orders, the railroad, upon conviction in a court of competent jurisdiction, shall be fined not less than $100 and not more than $1,000 for each violation, failure, or refusal.

(2) The commission shall recover the fine in a civil action in a court of competent jurisdiction. Each day's violation, failure, or refusal is a separate offense subject to penalty in accordance with subsection (1).

(3) Enforcement of violations in this chapter is limited by 49 U.S.C. 20113.

History: En. Sec. 1, Ch. 104, L. 2015.

69-14-105. Fees to be charged by commission. The commission shall require and receive a fee from the affected railroad to pay the cost of publishing notice as required by this chapter.

History: En. Sec. 3, Ch. 500, L. 1979; Sec. 69-14-313, MCA 2013; redes. 69-14-105 by Code Commissioner, 2015.

69-14-106 through 69-14-110 reserved.

69-14-111. Supervision of railroads. (1) The commission shall supervise railroads subject to the provisions of this chapter.

(2) The commission may:

(a) adopt or enforce regulations and orders related to railroad safety or security in accordance with 49 U.S.C. 20106;

(b) bring civil action in a district court for violations of federal railroad safety regulations in accordance with 49 U.S.C. 20113; and

(c) participate in investigative and surveillance activities in accordance with 49 U.S.C. 20105.

History: En. Sec. 16, Ch. 37, L. 1907; Sec. 4378, Rev. C. 1907; re-en. Sec. 3797, R.C.M. 1921; re-en. Sec. 3797, R.C.M. 1935; R.C.M. 1947, 72-119(part); amd. Sec. 1, Ch. 235, L. 1997; amd. Sec. 7, Ch. 104, L. 2015.

Cross-References

Public transportation issues — Department of Transportation to represent state, 60-21-101.
Application — definition, 69-14-102.

69-14-112. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Secs. 16, 16a, Ch. 37, L. 1907; Secs. 4378, 4379, Rev. C. 1907; re-en. Secs. 3797, 3798, R.C.M. 1921; re-en. Secs. 3797, 3798, R.C.M. 1935; R.C.M. 1947, 72-119(part), 72-120; amd. Sec. 24, Ch. 43, L. 1979; amd. Sec. 2, Ch. 235, L. 1997; amd. Sec. 86, Ch. 51, L. 1999.

69-14-113. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Secs. 10, 18, Ch. 37, L. 1907; Secs. 4372, 4381, Rev. C. 1907; re-en. Secs. 3791, 3800, R.C.M. 1921; re-en. Secs. 3791, 3800, R.C.M. 1935; R.C.M. 1947, 72-113, 72-122; amd. Sec. 25, Ch. 43, L. 1979; amd. Sec. 1, Ch. 87, L. 1979; amd. Sec. 2030, Ch. 56, L. 2009.

69-14-114. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part); amd. Sec. 3, Ch. 235, L. 1997.

69-14-115. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1)En. Sec. 1, Ch. 115, L. 1913; re-en. Sec. 3819, R.C.M. 1921; re-en. Sec. 3819, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-142, R.C.M. 1947; (2)En. Sec. 2, Ch. 115, L. 1913; re-en. Sec. 3820, R.C.M. 1921; re-en. Sec. 3820, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1971; Sec. 72-143, R.C.M. 1947; R.C.M. 1947, 72-142, 72-143; amd. Sec. 26, Ch. 43, L. 1979; amd. Sec. 13, Ch. 125, L. 1983; amd. Sec. 4, Ch. 235, L. 1997.

69-14-116. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 136, L. 1909; re-en. Sec. 3827, R.C.M. 1921; re-en. Sec. 3827, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1959; amd. Sec. 2, Ch. 124, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-150; amd. Sec. 1, Ch. 487, L. 1991; amd. Sec. 1, Ch. 372, L. 1993; amd. Sec. 5, Ch. 235, L. 1997.

69-14-117. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 19, Ch. 37, L. 1907; Sec. 4382, Rev. C. 1907; re-en. Sec. 3801, R.C.M. 1921; re-en. Sec. 3801, R.C.M. 1935; R.C.M. 1947, 72-123.

69-14-118. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R.C.M. 1921; re-en. Sec. 3834, R.C.M. 1935; amd. Sec. 20. Ch. 315, L. 1974; R.C.M. 1947, 72-156(part).

69-14-119. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R.C.M. 1921; re-en. Sec. 3834, R.C.M. 1935; amd. Sec. 20. Ch. 315, L. 1974; R.C.M. 1947, 72-156(part).

69-14-120. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-163(part); amd. Sec. 6, Ch. 235, L. 1997.

69-14-121 through 69-14-130 reserved.

69-14-131. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 27, Ch. 43, L. 1979; amd. Sec. 2031, Ch. 56, L. 2009.

69-14-132. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R.C.M. 1921; re-en. Sec. 3802, R.C.M. 1935; amd. Sec. 13, Ch. 315, L. 1974; R.C.M. 1947, 72-124; amd. Sec. 28, Ch. 43, L. 1979; amd. Sec. 2032, Ch. 56, L. 2009.

69-14-133. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 30, Ch. 37, L. 1907; Sec. 4393, Rev. C. 1907; re-en. Sec. 3812, R.C.M. 1921; re-en. Sec. 3812, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-135; amd. Sec. 29, Ch. 43, L. 1979; amd. Sec. 7, Ch. 235, L. 1997.

69-14-134. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 24, Ch. 37, L. 1907; Sec. 4387, Rev. C. 1907; re-en. Sec. 3806, R.C.M. 1921; re-en. Sec. 3806, R.C.M. 1935; R.C.M. 1947, 72-128; amd. Sec. 30, Ch. 43, L. 1979; amd. Sec. 2033, Ch. 56, L. 2009.

69-14-135. Repealed. Sec. 10, Ch. 104, L. 2015.

History: Ap. p. Sec. 25, Ch. 37, L. 1907; Sec. 4388, Rev. C. 1907; re-en. Sec. 3807, R.C.M. 1921; re-en. Sec. 3807, R.C.M. 1935; Sec. 72-129, R.C.M. 1947; Ap. p. Sec. 6, Ch. 136, L. 1909; re-en. Sec. 3831, R.C.M. 1921; re-en. Sec. 3831, R.C.M. 1935; Sec. 72-154, R.C.M. 1947; Ap. p. Sec. 5, Ch. 105, L. 1913; re-en. Sec. 3839, R.C.M. 1921; re-en. Sec. 3839, R.C.M. 1935; Sec. 72-161, R.C.M. 1947; R.C.M. 1947, 72-129, 72-154, 72-161; amd. Sec. 31, Ch. 43, L. 1979.

69-14-136. Repealed. Sec. 55, Ch. 43, L. 1979.

History: En. Sec. 6, Ch. 105, L. 1913; re-en. Sec. 3840, R.C.M. 1921; re-en. Sec. 3840, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-162.

69-14-137. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907; re-en. Sec. 3811, R.C.M. 1921; re-en. Sec. 3811, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-134; amd. Sec. 32, Ch. 43, L. 1979.

Part 2
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City and town regulation of railroads, Title 7, ch. 14, part 43.
Certain political contributions by railroads prohibited, 13-35-227.
Criminal offense to carry dangerous drugs on train, 45-9-127.
Railroad crossings — stops required, 61-8-348, 61-8-349.
Moving heavy equipment at grade crossings, 61-8-350.
Expense of cleaning and disinfecting carriers' facilities, 81-2-110.

69-14-201. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 971, Civ. C. 1895; re-en. Sec. 4324, Rev. C. 1907; re-en. Sec. 6558, R.C.M. 1921; Cal. Civ. C. Sec. 481; re-en. Sec. 6558, R.C.M. 1935; R.C.M. 1947, 72-602.

69-14-202. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 26, L. 1905; re-en. Sec. 4343, Rev. C. 1907; re-en. Sec. 6582, R.C.M. 1921; re-en. Sec. 6582, R.C.M. 1935; amd. Sec. 1, Ch. 266, L. 1969; amd. Sec. 21, Ch. 315, L. 1974; R.C.M., 72-627; amd. Sec. 33, Ch. 43, L. 1979; amd. Sec. 1, Ch. 495, L. 1987; amd. Sec. 1, Ch. 645, L. 1989.

69-14-203. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1)En. Sec. 1, Ch. 67, L. 1917; re-en. Sec. 6584, R.C.M. 1921; re-en. Sec. 6584, R.C.M. 1935; Sec. 72-629, R.C.M. 1947; (2)En. Sec. 2, Ch. 67, L. 1917; re-en. Sec. 6585, R.C.M. 1921; re-en. Sec. 6585, R.C.M. 1935; Sec. 72-630, R.C.M. 1947; R.C.M. 1947, 72-629, 72-630.

69-14-204. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 972, Civ. C. 1895; re-en. Sec. 4325, Rev. C. 1907; re-en. Sec. 6559, R.C.M. 1921; Cal. Civ. C. Sec. 482; re-en. Sec. 6559, R.C.M. 1935; R.C.M. 1947, 72-603.

69-14-205. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 973, Civ. C. 1895; re-en. Sec. 4326, Rev. C. 1907; re-en. Sec. 6560, R.C.M. 1921; Cal. Civ. C. Sec. 483; re-en. Sec. 6560, R.C.M. 1935; R.C.M. 1947, 72-604.

69-14-206. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 974, Civ. C. 1895; re-en. Sec. 4327, Rev. C. 1907; re-en. Sec. 6561, R.C.M. 1921; Cal. Civ. C. Sec. 484; re-en. Sec. 6561, R.C.M. 1935; R.C.M. 1947, 72-605.

69-14-207. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 975, Civ. C. 1895; re-en. Sec. 4328, Rev. C. 1907; re-en. Sec. 6562, R.C.M. 1921; Cal. Civ. C. Sec. 487; re-en. Sec. 6562, R.C.M. 1935; R.C.M. 1947, 72-606; amd. Sec. 2034, Ch. 56, L. 2009.

69-14-208. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 976, Civ. C. 1895; re-en. Sec. 4329, Rev. C. 1907; re-en. Sec. 6563, R.C.M. 1921; Cal. Civ. C. Sec. 488; re-en. Sec. 6563, R.C.M. 1935; R.C.M. 1947, 72-607; amd. Sec. 2035, Ch. 56, L. 2009.

69-14-209. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 977, Civ. C. 1895; re-en. Sec. 4330, Rev. C. 1907; re-en. Sec. 6564, R.C.M. 1921; Cal. Civ. C. Sec. 490; re-en. Sec. 6564, R.C.M. 1935; R.C.M. 1947, 72-608; amd. Sec. 34, Ch. 43, L. 1979.

69-14-210. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 970, Civ. C. 1895; re-en. Sec. 4323, Rev. C. 1907; re-en. Sec. 6557, R.C.M. 1921; Cal. Civ. C. Sec. 479; re-en. Sec. 6557, R.C.M. 1935; R.C.M. 1947, 72-601; amd. Sec. 2036, Ch. 56, L. 2009.

69-14-211. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1)En. Sec. 1, p. 150, L. 1893; re-en. Sec. 978, Civ. C. 1895; re-en. Sec. 4331, Rev. C. 1907; re-en. Sec. 6565, R.C.M. 1921; re-en. Sec. 6565, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1943; amd. Sec. 1, Ch. 60, L. 1949; Sec. 72-609, R.C.M. 1947; (2)En. Sec. 4, p. 151, L. 1893; re-en. Sec. 981, Civ. C. 1895; re-en. Sec. 4334, Rev. C. 1907; re-en. Sec. 6568, R.C.M. 1921; re-en. Sec. 6568, R.C.M. 1935; amd. Sec. 3, Ch. 60, L. 1949; Sec. 72-612, R.C.M. 1947; R.C.M. 1947, 72-609, 72-612; amd. Sec. 2037, Ch. 56, L. 2009.

69-14-212. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1)En. Sec. 2, p. 150, L. 1893; re-en. Sec. 979, Civ. C. 1895; re-en. Sec. 4332, Rev. C. 1907; re-en. Sec. 6566, R.C.M. 1921; re-en. Sec. 6566, R.C.M. 1935; amd. Sec. 2, Ch. 60, L. 1949; Sec. 72-610, R.C.M. 1947; (2) En. Sec. 3, p. 151, L. 1893; re-en. Sec. 980, Civ. C. 1895; re-en. Sec. 4333, Rev. C. 1907; re-en. Sec. 6567, R.C.M. 1921; re-en. Sec. 6567, R.C.M. 1935; Sec. 72-611, R.C.M. 1947; R.C.M. 1947, 72-610, 72-611.

69-14-213. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 5, p. 152, L. 1893; re-en. Sec. 982, Civ. C. 1895; re-en. Sec. 4335, Rev. C. 1907; re-en. Sec. 6569, R.C.M. 1921; re-en. Sec. 6569, R.C.M. 1935; R.C.M. 1947, 72-613.

69-14-214. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 6, p. 152, L. 1893; re-en. Sec. 983, Civ. C. 1895; re-en. Sec. 4336, Rev. C. 1907; re-en. Sec. 6570, R.C.M. 1921; re-en. Sec. 6570, R.C.M. 1935; R.C.M. 1947, 72-614.

69-14-215. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Secs. 1, 2, Ch. 24, L. 1917; re-en. Secs. 6611, 6612, R.C.M. 1921; re-en. Secs. 6611, 6612, R.C.M. 1935; R.C.M. 1947, 72-654, 72-655; amd. Sec. 35, Ch. 43, L. 1979; amd. Sec. 2038, Ch. 56, L. 2009.

69-14-216. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 138, L. 1909; re-en. Sec. 6550, R.C.M. 1921; re-en. Sec. 6550, R.C.M. 1935; R.C.M. 1947, 72-411.

69-14-217 through 69-14-230 reserved.

69-14-231. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 2, Ch. 136, L. 1909; re-en. Sec. 3828, R.C.M. 1921; re-en. Sec. 3828, R.C.M. 1935; amd. Sec. 3, Ch. 124, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-151.

69-14-232. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1)En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; Sec. 72-622, R.C.M. 1947; (2)En. Sec. 2, Ch. 54, L. 1907; Sec. 4339, Rev. C. 1907; re-en. Sec. 6578, R.C.M. 1921; re-en. Sec. 6578, R.C.M. 1935; Sec. 72-623, R.C.M. 1947; R.C.M. 1947, 72-622(1), 72-623; amd. Sec. 36, Ch. 43, L. 1979; amd. Sec. 1, Ch. 607, L. 1983; amd. Sec. 8, Ch. 235, L. 1997.

69-14-233. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(part).

69-14-234. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(part).

69-14-235. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(4).

69-14-236. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1) thru (3)En. Sec. 1, Ch. 18, L. 1909; re-en. Sec. 6609, R.C.M. 1921; re-en. Sec. 6609, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1977; Sec. 72-652, R.C.M. 1947; (4)En. Sec. 2, Ch. 18, L. 1909; re-en. Sec. 6610, R.C.M. 1921; re-en. Sec. 6610, R.C.M. 1935; Sec. 72-653, R.C.M. 1947; R.C.M. 1947, 72-652, 72-653.

69-14-237. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1)En. Sec. 1, Ch. 145, L. 1919; re-en. Sec. 6620, R.C.M. 1921; re-en. Sec. 6620, R.C.M. 1935; Sec. 72-663, R.C.M. 1947; (2)En. Sec. 2, Ch. 145, L. 1919; re-en. Sec. 6621, R.C.M. 1921; re-en. Sec. 6621, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-664, R.C.M. 1947; (3)En. Sec. 3, Ch. 145, L. 1919; re-en. Sec. 6622, R.C.M. 1921; re-en. Sec. 6622, R.C.M. 1935; Sec. 72-665, R.C.M. 1947; R.C.M. 1947, 72-663, 72-664, 72-665.

69-14-238. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1)(a)En. Sec. 1, Ch. 109, L. 1957; Sec. 72-668, R.C.M. 1947; (1)(b)En. Sec. 2, Ch. 109, L. 1957; Sec. 72-669, R.C.M. 1947; (2)En. Sec. 3, Ch. 109, L. 1957; Sec. 72-670, R.C.M. 1947; R.C.M. 1947, 72-668, 72-669, 72-670; amd. Sec. 2039, Ch. 56, L. 2009.

69-14-239. Operation of trains at grade crossings. (1) Except as provided in subsection (2), no railway company operating trains within this state shall permit any locomotives or cars to cross the tracks of any other railroad, at grade, without coming to a full stop immediately before crossing.

(2) (a) If any railway company or companies using one or more tracks crossing each other or connecting in any way at a common grade shall, by an interlocking plant, signal station, or any other works or fixtures, to be erected by them or either of them, render it safe to pass over said crossings without stopping and if such plant, works, or fixtures shall have been first approved by the county commissioners of the county wherein such works are to be constructed and used and the plans of such works and fixtures for such crossing, designating the place of such crossing, shall have been filed with such commissioners, then and in that case the foregoing

provisions of this section requiring the stopping of trains at such crossing shall not apply to said companies or either of them.

(b) If said county commissioners shall disapprove any such plans so filed with them or fail to approve the same within 20 days after the filing thereof with them, such railway companies or either of them may apply in the county where such crossing is situated to the district court in and for said county or to a judge thereof in vacation, by petition in writing setting forth the object of such application. Said court or judge shall thereupon appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served upon said county commissioners at least 10 days before the day appointed for said hearing. Said district court or a judge thereof in vacation shall have full power upon the hearing of said petition to grant the prayer thereof or to make such other order thereon as may be proper in the premises, and the foregoing provisions of this section requiring the stoppage of trains at crossings shall not apply to said railway companies or either of them if said district court shall by its order upon said petition grant the prayer thereof or otherwise and to any extent approve the construction and use of the interlocking plant or other structures therein referred to.

History: **En. Sec. 1, Ch. 8, L. 1903; re-en. Sec. 4359, Rev. C. 1907; re-en. Sec. 6596, R.C.M. 1921; re-en. Sec. 6596, R.C.M. 1935; R.C.M. 1947, 72-641.**

Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

Certain vehicles to stop at all railroad grade crossings, 61-8-349.

Railroad highway crossing, Title 69, ch. 14, part 6.

69-14-240. Duty to construct drains and ditches. (1) It shall be the duty of every corporation, company, or person owning or operating any railroad or branch thereof in this state and of any corporation, company, or person constructing any railroad in this state, within 3 months after the completion of the same through any county in this state, to cause to be constructed and maintained suitable ditches and drains along each side of the roadbed of such road or to construct culverts or openings through such roadbed to connect with ditches, drains, or watercourses, so as to afford sufficient outlet to drain and carry off the water along such railroad whenever the draining of such water has been obstructed or rendered necessary by the construction of such railroad. None of the drains or ditches herein referred to shall be required to be constructed by any of the persons or corporations herein named or described except when required to remove and drain off water accumulated upon property adjacent to or upon the right-of-way whose natural channel or outlet has been destroyed or impaired by the embankment of such railway so constructed as aforesaid.

(2) In case such corporation, company, or person shall fail or neglect to construct and maintain such ditches or drains as are herein required within the time limited in this section, the board of county commissioners of any county through which such railroad has been or may be constructed and located and in which the draining herein required has been neglected is hereby authorized and required, upon the petition of 20 landowners of such county along the line of and contiguous to such railroad, to cause such ditches or drains, as are herein required, to be constructed and maintained. Said board of county commissioners may maintain an action against such corporation, company, or person so failing to comply with the provisions of this section, in any court of competent jurisdiction and in the name of such county, and shall be entitled to recover all costs and expenses incurred in the construction and maintenance of said drains or ditches.

History: **En. Sec. 2, Ch. 101, L. 1903; re-en. Sec. 4362, Rev. C. 1907; re-en. Sec. 6599, R.C.M. 1921; re-en. Sec. 6599, R.C.M. 1935; R.C.M. 1947, 72-644.**

Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

69-14-241 through 69-14-250 reserved.

69-14-251. Annual reports. (1) The commission shall require verified annual reports from each and every railroad owning, operating, or having any line of railroad in this state and shall prescribe the manner in which such reports shall be made and may require specific answers to all questions upon which the commission may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the commission. The commission, at such other times as it may deem necessary, may require such other information, statements, or reports as may be deemed necessary and may fix the time for filing of the same.

(2) Any railroad failing or refusing to make or file such annual report or failing or refusing to furnish such additional information, statements, or reports, as may be demanded by the commission, shall forfeit the sum of $500 for each day that such refusal or neglect shall be continued.

History: **En. Sec. 32, Ch. 37, L. 1907; Sec. 4395, Rev. C. 1907; re-en. Sec. 3814, R.C.M. 1921; re-en. Sec. 3814, R.C.M. 1935; R.C.M. 1947, 72-137.**

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-14-252. Accident reports. (1) A railroad company operating any line of railroad within this state shall promptly on the occurrence of an accident report the accident to the commission. The report must include the time and place of the accident, the names of any persons killed or injured, and the value of any property destroyed.

(2) The commission may adopt rules to set reporting thresholds and implement this section.

History: **En. Sec. 17, Ch. 37, L. 1907; Sec. 4380, Rev. C. 1907; re-en. Sec. 3799, R.C.M. 1921; re-en. Sec. 3799, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-121; amd. Sec. 37, Ch. 43, L. 1979; amd. Sec. 8, Ch. 104, L. 2015; amd. Sec. 1, Ch. 224, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 224, L. 2025. Amendment effective April 17, 2025.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Part 3
Ratemaking Procedures (Renumbered and Repealed)

69-14-301. Repealed. Sec. 17, Ch. 235, L. 1997.

History: **(1) thru (3)En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; Sec. 72-116, R.C.M. 1947; (4)En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; Sec. 72-118, R.C.M. 1947; R.C.M. 1947, 72-116(1), 72-118(part); amd. Sec. 38, Ch. 43, L. 1979.**

69-14-302. Repealed. Sec. 17, Ch. 235, L. 1997.

History: **En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; R.C.M. 1947, 72-116(part).**

69-14-303. Repealed. Sec. 17, Ch. 235, L. 1997.

History: **(1), (2)En. Secs. 22, 23, Ch. 37, L. 1907; Secs. 4385, 4386, Rev. C. 1907; re-en. Secs. 3804, 3805, R.C.M. 1921; re-en. Secs. 3804, 3805, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Secs. 58, 59, Ch. 359, L. 1977; Secs. 72-126, 72-127, R.C.M. 1947; (3)En. 72-231 by Sec. 1, Ch. 473, L. 1977; Sec. 72-231, R.C.M. 1947; R.C.M. 1947, 72-126, 72-127, 72-231; amd. Sec. 39, Ch. 43, L. 1979.**

69-14-304. Repealed. Sec. 17, Ch. 235, L. 1997.

History: **(1)En. Sec. 1, p. 164, L. 1901; re-en. Sec. 4353, Rev. C. 1907; re-en. Sec. 6590, R.C.M. 1921; re-en. Sec. 6590, R.C.M. 1935; Sec. 72-635, R.C.M. 1947; (2)En. Sec. 2, p. 165, L. 1901; re-en. Sec. 4354, Rev. C. 1907; re-en. Sec. 6591, R.C.M. 1921; re-en. Sec. 6591, R.C.M. 1935; Sec. 72-636, R.C.M. 1947; R.C.M. 1947, 72-635, 72-636.**

69-14-305. Repealed. Sec. 17, Ch. 235, L. 1997.

History: **En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).**

69-14-306. Repealed. Sec. 17, Ch. 235, L. 1997.

History: **En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).**

69-14-307. Repealed. Sec. 17, Ch. 235, L. 1997.

History: **En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).**

69-14-308. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-309. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part); amd. Sec. 40, Ch. 43, L. 1979.

69-14-310. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-311. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part); amd. Sec. 1, Ch. 430, L. 1979.

69-14-312. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part).

69-14-313. Renumbered 69-14-105. Code Commissioner, 2015.

69-14-314 through 69-14-320 reserved.

69-14-321. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; R.C.M. 1947, 72-116(part).

69-14-322. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 26, Ch. 37, L. 1907; Sec. 4389, Rev. C. 1907; re-en. Sec. 3808, R.C.M. 1921; amd. Sec. 1, Ch. 155, L. 1925; re-en. Sec. 3808, R.C.M. 1935; R.C.M. 1947, 72-130; amd. Sec. 41, Ch. 43, L. 1979.

Part 4
Review of Commission Action (Repealed)

69-14-401. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 21, Ch. 37, L. 1907; Sec. 4384, Rev. C. 1907; re-en. Sec. 3803, R.C.M. 1921; re-en. Sec. 3803, R.C.M. 1935; R.C.M. 1947, 72-125; amd. Sec. 9, Ch. 235, L. 1997.

69-14-402. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1), (2)En. Sec. 28, Ch. 37, L. 1907; Sec. 4391, Rev. C. 1907; re-en. Sec. 3810, R.C.M. 1921; re-en. Sec. 3810, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-133, R.C.M. 1947; (3)En. Sec. 27, Ch. 37, L. 1907; Sec. 4390, Rev. C. 1907; re-en. Sec. 3809, R.C.M. 1921; re-en. Sec. 3809, R.C.M. 1935; Sec. 72-132, R.C.M. 1947; R.C.M. 1947, 72-132, 72-133; amd. Sec. 42, Ch. 43, L. 1979.

69-14-403. Repealed. Sec. 55, Ch. 43, L. 1979.

History: En. Sec. 7, Ch. 136, L. 1909; re-en. Sec. 3832, R.C.M. 1921; re-en. Sec. 3832, R.C.M. 1935; R.C.M. 1947, 72-155.

Part 5
Railroad Corporations (Repealed)

69-14-501. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; R.C.M. 1947, 72-204(part); amd. Sec. 43, Ch. 43, L. 1979; amd. Sec. 213, Ch. 368, L. 1991.

69-14-502. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; R.C.M. 1947, 72-204(part); amd. Sec. 2040, Ch. 56, L. 2009.

69-14-503. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R.C.M. 1921; re-en. Sec. 6504, R.C.M. 1935; R.C.M. 1947, 72-202(part).

69-14-504. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R.C.M. 1921; re-en. Sec. 6504, R.C.M. 1935; R.C.M. 1947, 72-202(part).

69-14-505. Repealed. Sec. 10, Ch. 104, L. 2015.

History: (1), (2)En. Sec. 6, p. 94, Ex. L. 1873; re-en. Sec. 304, 5th Div. Rev. Stat. 1879; re-en. Sec. 682, 5th Div. Comp. Stat. 1887; amd. Sec. 892, Civ. C. 1895; re-en. Sec. 4273, Rev. C. 1907; re-en. Sec. 6505, R.C.M. 1921; re-en. Sec. 6505, R.C.M. 1935; Sec. 72-203, R.C.M. 1947; (3)En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; Sec. 72-204, R.C.M. 1947; R.C.M. 1947, 72-203, 72-204(part); amd. Sec. 2041, Ch. 56, L. 2009.

69-14-506. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 21, p. 104, Ex. L. 1873; re-en. Sec. 319, 5th Div. Rev. Stat. 1879; re-en. Sec. 698, 5th Div. Comp. Stat. 1887; re-en. Sec. 906, Civ. C. 1895; re-en. Sec. 4287, Rev. C. 1907; re-en. Sec. 6519, R.C.M. 1921; re-en. Sec. 6519, R.C.M. 1935; R.C.M. 1947, 72-217.

69-14-507. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R.C.M. 1921; re-en. Sec. 6526, R.C.M. 1935; amd. Sec. 11-149, Ch. 264, L. 1963; R.C.M. 1947, 72-224.

69-14-508. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, p. 147, L. 1893; re-en. Sec. 920, Civ. C. 1895; re-en. Sec. 4296, Rev. C. 1907; re-en. Sec. 6528, R.C.M. 1921; re-en. Sec. 6528, R.C.M. 1935; R.C.M. 1947, 72-226.

69-14-509. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 2, p. 147, L. 1893; re-en. Sec. 921, Civ. C. 1895; re-en. Sec. 4297, Rev. C. 1907; re-en. Sec. 6529, R.C.M. 1921; re-en. Sec. 6529, R.C.M. 1935; R.C.M. 1947, 72-227.

69-14-510. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 3, p. 147, L. 1893; re-en. Sec. 922, Civ. C. 1895; re-en. Sec. 4298, Rev. C. 1907; re-en. Sec. 6530, R.C.M. 1921; re-en. Sec. 6530, R.C.M. 1935; R.C.M. 1947, 72-228.

69-14-511. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R.C.M. 1921; Cal. Civ. C. Sec. 473; re-en. Sec. 6524, R.C.M. 1935; R.C.M. 1947, 72-222(part); amd. Sec. 44, Ch. 43, L. 1979.

69-14-512. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R.C.M. 1921; Cal. Civ. C. Sec. 473; re-en. Sec. 6524, R.C.M. 1935; R.C.M. 1947, 72-222(part); amd. Sec. 45, Ch. 43, L. 1979.

69-14-513. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 704, 5th Div. Comp. Stat. 1887; re-en. Sec. 912, Civ. C. 1895; re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. 6525, R.C.M. 1921; Cal. Civ. C. Sec. 473a; re-en. Sec. 6525, R.C.M. 1935; R.C.M. 1947, 72-223(part); amd. Sec. 46, Ch. 43, L. 1979; amd. Sec. 49, Ch. 125, L. 2001.

69-14-514. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, p. 157, L. 1893; re-en. Sec. 923, Civ. C. 1895; re-en. Sec. 4299, Rev. C. 1907; re-en. Sec. 6531, R.C.M. 1921; re-en. Sec. 6531, R.C.M. 1935; R.C.M. 1947, 72-229; amd. Sec. 47, Ch. 43, L. 1979.

69-14-515. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 22, p. 104, Ex. L. 1873; re-en. Sec. 320, 5th Div. Rev. Stat. 1879; re-en. Sec. 699, 5th Div. Comp. Stat. 1887; re-en. Sec. 907, Civ. C. 1895; re-en. Sec. 4288, Rev. C. 1907; re-en. Sec. 6520, R.C.M. 1921; re-en. Sec. 6520, R.C.M. 1935; R.C.M. 1947, 72-218.

69-14-516 through 69-14-530 reserved.

69-14-531. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 4, p. 93, Ex. L. 1873; re-en. Sec. 302, 5th Div. Rev. Stat. 1879; re-en. Sec. 680, 5th Div. Comp. Stat. 1887; amd. Sec. 890, Civ. C. 1895; re-en. Sec. 4271, Rev. C. 1907; re-en. Sec. 6503, R.C.M. 1921; Cal. Civ. C. Secs. 454-496; re-en. Sec. 6503, R.C.M. 1935; R.C.M. 1947, 72-201.

69-14-532. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part); amd. Sec. 48, Ch. 43, L. 1979.

69-14-533. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-534. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 13, p. 102, Ex. L. 1873; re-en. Sec. 311, 5th Div. Rev. Stat. 1879; re-en. Sec. 690, 5th Div. Comp. Stat. 1887; re-en. Sec. 898, Civ. C. 1895; re-en. Sec. 4279, Rev. C. 1907; re-en. Sec. 6512, R.C.M. 1921; re-en. Sec. 6512, R.C.M. 1935; R.C.M. 1947, 72-210.

69-14-535. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 16, p. 103, Ex. L. 1873; re-en. Sec. 314, 5th Div. Rev. Stat. 1879; re-en. Sec. 693, 5th Div. Comp. Stat. 1887; re-en. Sec. 901, Civ. C. 1895; re-en. Sec. 4282, Rev. C. 1907; re-en. Sec. 6515, R.C.M. 1921; re-en. Sec. 6515, R.C.M. 1935; R.C.M. 1947, 72-213.

69-14-536. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 702, 5th Div. Comp. Stat. 1887; re-en. Sec. 910, Civ. C. 1895; re-en. Sec. 4291, Rev. C. 1907; re-en. Sec. 6523, R.C.M. 1921; re-en. Sec. 6523, R.C.M. 1935; R.C.M. 1947, 72-221; amd. Sec. 49, Ch. 43, L. 1979; amd. Sec. 50, Ch. 125, L. 2001.

69-14-537. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 12, p. 101, Ex. L. 1873; re-en. Sec. 310, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 37, L. 1883; re-en. Sec. 688, 5th Div. Comp. Stat. 1887; amd. Sec. 896, Civ. C. 1895; re-en. Sec. 4277, Rev. C. 1907; re-en. Sec. 6510, R.C.M. 1921; re-en. Sec. 6510, R.C.M. 1935; R.C.M. 1947, 72-208.

69-14-538. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 689, 5th Div. Comp. Stat. 1887; re-en. Sec. 897, Civ. C. 1895; re-en. Sec. 4278, Rev. C. 1907; re-en. Sec. 6511, R.C.M. 1921; re-en. Sec. 6511, R.C.M. 1935; R.C.M. 1947, 72-209.

69-14-539. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-540 through 69-14-550 reserved.

69-14-551. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 17, p. 103, Ex. L. 1873; re-en. Sec. 315, 5th Div. Rev. Stat. 1879; re-en. Sec. 694, 5th Div. Comp. Stat. 1887; re-en. Sec. 902, Civ. C. 1895; re-en. Sec. 4283, Rev. C. 1907; re-en. Sec. 6516, R.C.M. 1921; re-en. Sec. 6516, R.C.M. 1935; R.C.M. 1947, 72-214.

69-14-552. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part); amd. Sec. 51, Ch. 125, L. 2001.

69-14-553. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 15, p. 102, Ex. L. 1873; re-en. Sec. 313, 5th Div. Rev. Stat. 1879; re-en. Sec. 692, 5th Div. Comp. Stat. 1887; re-en. Sec. 900, Civ. C. 1895; re-en. Sec. 4281, Rev. C. 1907; re-en. Sec. 6514, R.C.M. 1921; re-en. Sec. 6514, R.C.M. 1935; R.C.M. 1947, 72-212; amd. Sec. 3, Ch. 814, L. 1991.

69-14-554. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 11, p. 100, Ex. L. 1873; re-en. Sec. 309, 5th Div. Rev. Stat. 1879; re-en. Sec. 687, 5th Div. Comp. Stat. 1887; re-en. Sec. 895, Civ. C. 1895; re-en. Sec. 4276, Rev. C. 1907; re-en. Sec. 6509, R.C.M. 1921; re-en. Sec. 6509, R.C.M. 1935; R.C.M. 1947, 72-207.

69-14-555. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 707, 5th Div. Comp. Stat. 1887; re-en. Sec. 914, Civ. C. 1895; re-en. Sec. 4295, Rev. C. 1907; re-en. Sec. 6527, R.C.M. 1921; re-en. Sec. 6527, R.C.M. 1935; R.C.M. 1947, 72-225.

69-14-556. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R.C.M. 1921; re-en. Sec. 6513, R.C.M. 1935; amd. Sec. 11-148, Ch. 264, L. 1963; R.C.M. 1947, 72-211.

69-14-557. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 19, p. 104, Ex. L. 1873; re-en. Sec. 317, 5th Div. Rev. Stat. 1879; re-en. Sec. 696, 5th Div. Comp. Stat. 1887; re-en. Sec. 904, Civ. C. 1895; re-en. Sec. 4285, Rev. C. 1907; re-en. Sec. 6518, R.C.M. 1921; re-en. Sec. 6518, R.C.M. 1935; R.C.M. 1947, 72-216.

69-14-558. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-559. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 82, L. 1915; re-en. Sec. 6508, R.C.M. 1921; re-en. Sec. 6508, R.C.M. 1935; R.C.M. 1947, 72-206.

69-14-560. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R.C.M. 1921; amd. Sec. 1, Ch. 7, L. 1929; re-en. Sec. 6521, R.C.M. 1935; R.C.M. 1947, 72-219(part).

69-14-561. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-562. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R.C.M. 1921; amd. Sec. 1, Ch. 7, L. 1929; re-en. Sec. 6521, R.C.M. 1935; R.C.M. 1947, 72-219(part); amd. Sec. 1, Ch. 477, L. 2001; amd. Sec. 1, Ch. 303, L. 2003; amd. Sec. 3, Ch. 527, L. 2003.

69-14-563. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 18, p. 103, Ex. L. 1873; re-en. Sec. 316, 5th Div. Rev. Stat. 1879; re-en. Sec. 695, 5th Div. Comp. Stat. 1887; re-en. Sec. 903, Civ. C. 1895; re-en. Sec. 4284, Rev. C. 1907; re-en. Sec. 6517, R.C.M. 1921; re-en. Sec. 6517, R.C.M. 1935; R.C.M. 1947, 72-215(part).

Part 6
Railroad Highway Crossings

Part Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.
Authority of Transportation Commission to prioritize expenditures on railroad crossings, 60-2-121.
Obedience to signal indicating approach of train, 61-8-347.
Railroad crossings — stops required, 61-8-348, 61-8-349.
Moving heavy equipment at grade crossings, 61-8-350.
Penalty for interference with official railroad signs or signals, 61-8-713.
Operation of trains at grade crossings, 69-14-239.

69-14-601. Definition of railroad company. The words “railroad company”, as used in 69-14-601 through 69-14-611, shall be taken and construed to mean any corporation, person, or association of persons owning or operating a railroad.

History: En. Sec. 12, Ch. 148, L. 1919; re-en. Sec. 6636, R.C.M. 1921; re-en. Sec. 6636, R.C.M. 1935; R.C.M. 1947, 72-712.

69-14-602. Construction and maintenance of railroad crossings outside of incorporated cities and towns. At all places in the state, outside of incorporated cities and towns where a lawfully established public highway crosses any railroad, it shall be the duty of the railroad company owning or operating such railroad to construct and thereafter maintain in proper condition a good and safe crossing.

History: En. Sec. 1, Ch. 148, L. 1919; re-en. Sec. 6625, R.C.M. 1921; re-en. Sec. 6625, R.C.M. 1935; R.C.M. 1947, 72-701.

Cross-References

Roads crossing railroad, 7-14-2612.
Reflectorized material on crossing signs required, 69-14-612.

69-14-603. Railroad crossings in unincorporated towns or villages. In any unincorporated community ordinarily known as a village or town where the public necessity and convenience require a railroad crossing at the intersection of the railroad with any street or highway, whether lawfully established or otherwise, which is commonly used by the public, the board of county commissioners of the county may order the construction and maintenance of such railroad crossing. Upon such order becoming final and effective, it shall be the duty of the railroad company to construct and maintain in proper condition a good and safe crossing. The board of county commissioners may order more than one railroad crossing in such unincorporated community, as provided in this section, when the public necessity and convenience require more than one such crossing to afford reasonable facilities for public travel.

History: En. Sec. 2, Ch. 148, L. 1919; re-en. Sec. 6626, R.C.M. 1921; re-en. Sec. 6626, R.C.M. 1935; R.C.M. 1947, 72-702.

Cross-References

Reflectorized material on crossing signs required, 69-14-612.

69-14-604. Procedure to order construction of crossing. If a board of county commissioners orders the construction of a railroad crossing, the board shall enter an order upon its minutes, specifying the place of the crossing. A copy of the order must be served upon the railroad company, and a copy must be immediately mailed to the public service commission.

History: En. Sec. 3, Ch. 148, L. 1919; re-en. Sec. 6627, R.C.M. 1921; re-en. Sec. 6627, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 72-703; amd. Sec. 10, Ch. 235, L. 1997.

69-14-605. Time for completion of crossing. It shall be the duty of a railroad company to construct a crossing ordered by the board of county commissioners of any county within 60 days after service of such order; provided, however, that in case any crossing shall be ordered requiring any extended period of construction, such additional time as is reasonably necessary to complete the same shall be allowed by the commission upon the proper application for such extension.

History: En. Sec. 4, Ch. 148, L. 1919; re-en. Sec. 6628, R.C.M. 1921; re-en. Sec. 6628, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-704.

69-14-606. Role of public service commission with respect to crossings. (1) The commission may enforce the orders of any board of county commissioners for the construction of railroad crossings and may pass upon the reasonableness of any such order and modify, change, or annul the same.

(2) Whenever any railroad crossing has been ordered by the county commissioners, as herein provided, the railroad company may, within 30 days after the service of such order, serve upon the commission a notice stating why the order is considered unreasonable or unjust and requesting that the commission hold a hearing for the purpose of determining whether or not the construction of such crossing should reasonably be required. The commission shall thereupon institute a hearing for this purpose, and all interested parties shall be given reasonable notice and an opportunity to be heard. The commission may, after such hearing, either affirm, modify, or annul such order.

History: En. Secs. 5, 6, Ch. 148, L. 1919; re-en. Secs. 6629, 6630, R.C.M. 1921; re-en. Secs. 6629, 6630, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-705, 72-706; amd. Sec. 50, Ch. 43, L. 1979.

69-14-607. Overhead or underground crossings. (1) No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners.

(2) (a) The public service commission may, however, upon petition or request in writing of any board of county commissioners, order an overhead or underground crossing at any place where a railroad crossing has not been constructed and is required by the provisions of 69-14-601 through 69-14-611; provided, in its judgment, the safety, necessity, and convenience of the traveling public require such crossing.

(b) When any such petition or request is presented, the commission shall fix a date for hearing the same and shall give at least 10 days' written notice to the board of county commissioners and the owner or operator of the railroad to be affected by such order of the time fixed for the hearing. At such hearing, the commission shall hear all testimony offered as to the safety, necessity, and convenience of the traveling public requiring such a crossing and the expense of constructing and maintaining the same and shall make such investigation and inspection of the conditions at the place of crossing as may be deemed necessary or advisable and shall thereupon determine whether such order should be made.

(3) In the event an overhead or underground crossing is ordered, the commission may in its discretion require the same to be constructed and maintained by and at the expense of the railroad company or may apportion the expense between the railroad company and the county in which said crossing is located. The part of the expense apportioned to said county, if any, shall be paid to the railroad company from the funds of said county properly applicable to the payment of such expense.

History: En. Sec. 7, Ch. 148, L. 1919; re-en. Sec. 6631, R.C.M. 1921; re-en. Sec. 6631, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-707.

69-14-608. Court action to determine justness and reasonableness of commission order. The board of county commissioners or the railroad company affected by an order or decision of the commission made pursuant to the provisions of 69-14-601 through 69-14-611 may commence an action in any court having jurisdiction to determine the justness and reasonableness of such order or decision. In any such action the order or decision sought to be reviewed shall prima facie be deemed just, reasonable, and proper.

History: En. Sec. 8, Ch. 148, L. 1919; re-en. Sec. 6632, R.C.M. 1921; re-en. Sec. 6632, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-708.

69-14-609. Extension of time to comply with order. In the event of an application to the commission to review any order made by the board of county commissioners and in the event of any action to review any order or decision of the commission, as herein provided, the time within which to comply with said order shall be extended and the railroad company shall have 60 days after the order or decision becomes final and effective within which to comply with the same. The time for compliance as herein provided may be extended, for good cause shown, by the commission.

History: En. Sec. 9, Ch. 148, L. 1919; re-en. Sec. 6633, R.C.M. 1921; re-en. Sec. 6633, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-709.

69-14-610. Effect of railroad crossing provisions on liability of railroad. (1) Nothing contained in 69-14-601 through 69-14-611 affects the liability of a railroad company for damage to persons or property injured at a railroad crossing.

(2) A railroad company or an employee of a railroad company may not be held liable for damages to persons or property injured at a railroad crossing that is within a quiet zone, as defined in 69-14-620, if the damages are alleged to arise from the locomotive's failure to sound its horn or bell at a railroad crossing that is within a quiet zone as provided in 69-14-620.

History: En. Sec. 10, Ch. 148, L. 1919; re-en. Sec. 6634, R.C.M. 1921; re-en. Sec. 6634, R.C.M. 1935; R.C.M. 1947, 72-710; amd. Sec. 4, Ch. 527, L. 2003.

Cross-References

Liability, Title 27, ch. 1, part 7.

69-14-611. Penalty for failure to comply with crossing order. Any railroad company failing to construct any crossing after the order or decision requiring the construction of same has become final, within the time herein provided or within any extension of time granted by the commission, shall for each day's failure pay to the state a fine of not less than $10 or more than $100, to be recovered in a civil action in the name of the state, and it shall be the duty of the county attorney of the county within which is located the site of the proposed crossing to prosecute such action.

History: En. Sec. 11, Ch. 148, L. 1919; re-en. Sec. 6635, R.C.M. 1921; re-en. Sec. 6635, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-711.

69-14-612. Reflectorized material on crossing signs required. Within 2 years after April 9, 1987, a railroad company shall install and maintain reflectorized material on the front and back sides of crossbuck blades on all public crossing signs the railroad company is required to construct and maintain under 69-14-602 and 69-14-603.

History: En. Sec. 1, Ch. 448, L. 1987.

69-14-613 through 69-14-619 reserved.

69-14-620. Establishment of railroad quiet zones. (1) For the purposes of this section, "quiet zone" means a segment of a railroad within which is situated one or a number of consecutive railroad crossings at which locomotive horns and bells are not routinely sounded.

(2) A governing body of a municipality or a board of county commissioners may petition to the secretary of the United States department of transportation to establish quiet zones at railroad crossings that meet the requirements established in the rules adopted to implement 49 U.S.C. 20153(c). In developing the petition, the governing body of the municipality or the board of county commissioners shall consult with the railroad corporations that operate the rail lines through crossings that are within the proposed quiet zone. The petition must include how the municipality or county intends to implement the supplemental safety measures that are required by the United States department of transportation at railroad crossings within quiet zones.

(3) A quiet zone may not be established at a railroad crossing unless the governing body of a municipality or a board of county commissioners follows the procedure provided in subsection (2) and receives the approval of the secretary of the United States department of transportation or the secretary's designee.

History: **En. Sec. 1, Ch. 527, L. 2003.**

69-14-621. Repealed. Sec. 2, Ch. 359, L. 1989.

History: (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2)En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R.C.M. 1921; re-en. Sec. 3845, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-167, R.C.M. 1947; R.C.M. 1947, 72-164(part), 72-167(part).

69-14-622. Repealed. Sec. 2, Ch. 359, L. 1989.

History: En. Sec. 2, Ch. 151, L. 1919; re-en. Sec. 3843, R.C.M. 1921; re-en. Sec. 3843, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-165.

69-14-623. Repealed. Sec. 2, Ch. 359, L. 1989.

History: En. Sec. 3, Ch. 151, L. 1919; re-en. Sec. 3844, R.C.M. 1921; re-en. Sec. 3844, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-166.

69-14-624. Repealed. Sec. 2, Ch. 359, L. 1989.

History: En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R.C.M. 1921; re-en. Sec. 3845, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-167(part).

69-14-625. Repealed. Sec. 2, Ch. 359, L. 1989.

History: En. Sec. 5, Ch. 151, L. 1919; re-en. Sec. 3846, R.C.M. 1921; re-en. Sec. 3846, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-168.

69-14-626. Prohibition on extended obstruction of highway crossings. (1) It shall be unlawful for any corporation, association, or company to willfully obstruct, blockade, interfere with, or prevent the free use of any public highway within the state where such highway crosses any railroad track outside of incorporated cities and towns by stopping any railroad train, car, engine, or locomotive for more than 15 minutes at any one time or by placing, depositing, or leaving any article or thing whatsoever on any railroad track at the point where any public highway crosses such track outside of incorporated cities and towns.

(2) Any corporation, association, or company so obstructing, blockading, or interfering with the free use of any such highway shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $100. This section shall not be construed as repealing any existing laws prohibiting encroachments upon or obstruction of public highways.

History: En. Sec. 1, Ch. 43, L. 1907; Sec. 4358, Rev. C. 1907; re-en. Sec. 6595, R.C.M. 1921; re-en. Sec. 6595, R.C.M. 1935; R.C.M. 1947, 72-640.

Part 7
Protection of Livestock and Agricultural Resources

Part Cross-References

Funds earmarked for railroad crossings, 15-70-102.
Limitation on action for killing or injuring stock by railroad, 27-2-207.
Inspection of livestock transported by railroad — exception, 81-3-212.
Driving livestock on railroad tracks, 81-5-102.

69-14-701. Maintenance of fences — exception — penalty. (1) Railroad corporations shall build and maintain a legal fence on both sides of their track and property and maintain cattle guards at all crossings over which cattle or other domestic animals cannot pass, except that a fence is not required in places where water ditches, embankments, terrain, or other sufficient protection prevents domestic animals from straying onto the right-of-way. An affected landowner or lessee may construct, maintain, or repair a fence subject to approval and reimbursement by the railroad corporation.

(2) If a railroad corporation does not build and maintain the fence and guards and its engines or cars, because of the lack of a fence or maintenance of a fence, kill or maim cattle or other domestic animals upon its line of road, it must pay to the owner of the cattle or other domestic animals, in all cases, a fair market price for the animal, unless it occurred through the neglect or fault of the owner of the animal killed or maimed; however, nothing in this section

may be construed to prevent a person from recovering damages from a railroad corporation for its negligent killing or injury to cattle or other domestic animals at spurs, sidings, Ys, crossings, and turntables.

(3) An affected landowner or lessee may file a complaint with the public service commission when a fence is in disrepair or in need of maintenance. The public service commission shall certify that the fence is in need of repair and notify the railroad corporation responsible for the fence. The public service commission shall forward a copy of the complaint, a certification that the fence is in need of repair, and a verification that the railroad corporation was notified to the county attorney of the county within which the site of the fence in disrepair is located. Upon notice, the railroad corporation responsible for the fence shall repair the fence within 30 days, weather permitting. A railroad corporation failing to repair the fence within 30 days of notification shall pay a fine of $100 plus $50 a day each day after the 30th day of notification, for failure to repair the fence. The fine must be recovered in a civil action and deposited in the county general fund. It is the duty of the county attorney of the county within which the site of the fence in disrepair is located to prosecute the action.

History: En. Sec. 1, p. 267, L. 1891; en. Sec. 950, Civ. C. 1895; amd. Sec. 1, Ch. 29, L. 1905; amd. Sec. 1, Ch. 59, L. 1907; re-en. Sec. 4308, Rev. C. 1907; re-en. Sec. 6540, R.C.M. 1921; Cal. Civ. C. Sec. 485; re-en. Sec. 6540, R.C.M. 1935; R.C.M. 1947, 72-401; amd. Sec. 1, Ch. 363, L. 1993.

Cross-References

Negligence, 27-1-701, 27-1-702.

Costs of cattle guards as part of eminent domain proceedings, 70-30-301.

Legal fences defined, 81-4-101.

Where cattle guards are to be maintained, 81-4-102.

69-14-702. Crossings to be maintained. (1) Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state which may fence its right-of-way shall make crossings through its fence and over its roadbed along its right-of-way every 4 miles thereof or as near thereat as may be practicable.

(2) Such openings shall not be less than 60 feet in width.

History: (1)En. Sec. 1, p. 148, L. 1893; re-en. Sec. 959, Civ. C. 1895; re-en. Sec. 4318, Rev. C. 1907; re-en. Sec. 6552, R.C.M. 1921; re-en. Sec. 6552, R.C.M. 1935; Sec. 72-502, R.C.M. 1947; (2)En. Sec. 2, p. 148, L. 1893; re-en. Sec. 960, Civ. C. 1895; re-en. Sec. 4319, Rev. C. 1907; re-en. Sec. 6553, R.C.M. 1921; re-en. Sec. 6553, R.C.M. 1935; Sec. 72-503, R.C.M. 1947; R.C.M. 1947, 72-502, 72-503(part).

69-14-703. Placement of cattle guards. The railroad company or lessee, person, company, or corporation operating any railroad shall place cattle guards on either side of the openings required by 69-14-702, sufficient to prevent any cattle from entering upon the right-of-way enclosed.

History: En. Sec. 2, p. 148, L. 1893; re-en. Sec. 960, Civ. C. 1895; re-en. Sec. 4319, Rev. C. 1907; re-en. Sec. 6553, R.C.M. 1921; re-en. Sec. 6553, R.C.M. 1935; R.C.M. 1947, 72-503(part).

Cross-References

Costs of cattle guards as part of eminent domain proceedings, 70-30-301.

Where cattle guards are to be maintained, 81-4-102.

69-14-704. Openings under trestles. The railroad company, lessee, person, or company operating any railroad, in addition to the openings required by 69-14-702, shall leave unfenced any places where the railroad runs over trestles that are sufficiently high for cattle to go underneath the same.

History: En. Sec. 3, p. 148, L. 1893; re-en. Sec. 961, Civ. C. 1895; re-en. Sec. 4320, Rev. C. 1907; re-en. Sec. 6554, R.C.M. 1921; re-en. Sec. 6554, R.C.M. 1935; R.C.M. 1947, 72-504.

69-14-705. Application of provisions dealing with crossings. The provisions of 69-14-702 through 69-14-706 shall only apply to grazing country.

History: En. Sec. 4, p. 148, L. 1893; re-en. Sec. 962, Civ. C. 1895; re-en. Sec. 4321, Rev. C. 1907; re-en. Sec. 6555, R.C.M. 1921; re-en. Sec. 6555, R.C.M. 1935; R.C.M. 1947, 72-505.

69-14-706. Violation of crossing provisions. Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state violating the provisions of 69-14-702 through 69-14-705 shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in a sum not less than $100 and not more than $500.

History: En. Sec. 5, p. 148, L. 1893; re-en. Sec. 963, Civ. C. 1895; re-en. Sec. 4322, Rev. C. 1907; re-en. Sec. 6556, R.C.M. 1921; re-en. Sec. 6556, R.C.M. 1935; R.C.M. 1947, 72-506.

69-14-707. Liability for negligent destruction of domestic animals. Every railroad corporation or company operating any railroad or branch thereof within the limits of this state which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, mule, cow, heifer, bull, ox, steer, calf, or other domestic animal by running any engine or car over or against any such animal shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima facie evidence of negligence on the part of such corporation or company.

History: En. Sec. 1, p. 68, L. 1881; re-en. Sec. 713, 5th Div. Comp. Stat. 1887; amd. Sec. 951, Civ. C. 1895; re-en. Sec. 4309, Rev. C. 1907; re-en. Sec. 6541, R.C.M. 1921; re-en. Sec. 6541, R.C.M. 1935; R.C.M. 1947, 72-402.

Cross-References

Negligence, 27-1-701, 27-1-702.

69-14-708. Records of accidents involving livestock. (1) A railroad company must report to the department of livestock any livestock killed or injured by a train or railroad equipment on the railroad right-of-way within 30 days after the killing or injuring of any livestock.

(2) A railroad company failing to provide the notice provided for in subsection (1) is liable to the owner of the animal killed or injured, whether negligently done or not. The court or jury before whom an action is tried for the recovery of damages may in its discretion render a verdict and judgment for the amount of the value of the livestock killed or the amount of damages sustained by reason of injury.

History: (1) thru (3)En. Sec. 3, p. 70, L. 1881; amd. Sec. 720, 5th Div. Comp. Stat. 1887; amd. Sec. 953, Civ. C. 1895; amd. Sec. 2, Ch. 29, L. 1905; re-en. Sec. 4311, Rev. C. 1907; re-en. Sec. 6542, R.C.M. 1921; re-en. Sec. 6542, R.C.M. 1935; Sec. 72-403, R.C.M. 1947; (4)En. Sec. 721, 5th Div. Comp. Stat. 1887; re-en. Sec. 954, Civ. C. 1895; re-en. Sec. 4312, Rev. C. 1907; re-en. Sec. 6543, R.C.M. 1921; re-en. Sec. 6543, R.C.M. 1935; Sec. 72-404, R.C.M. 1947; R.C.M. 1947, 72-403, 72-404; amd. Sec. 72, Ch. 83, L. 1989; amd. Sec. 11, Ch. 235, L. 1997.

69-14-709. Allowance of attorney fees. (1) Except as provided in subsection (2), whenever any of the livestock referred to in this part are injured or killed and the owner brings an action for the recovery of the loss or damage sustained, the court in which the action is brought shall impose, as a part of the costs, a reasonable sum to be fixed by the court as a fee to the attorney of the prevailing or successful party for conducting the action. The fee must be collected in the same manner as other costs.

(2) A fee may not be allowed by the court or collected from the defendant when it appears from the pleadings or proof in an action that the defendant prior to the institution of the action offered or agreed to pay to the plaintiff, in settlement of the loss or damages claimed, a sum equal to or in excess of the amount recovered as damages in the action or unless the plaintiff, at least 40 days prior to the commencement of the action, has made a demand, in writing, upon the defendant, the defendant's agent, or the defendant's attorney for the money claimed as indemnity for the killing of the livestock.

History: En. Sec. 722, 5th Div. Comp. Stat. 1887; amd. Sec. 955, Civ. C. 1895; amd. Sec. 1, Ch. 101, L. 1903; re-en. Sec. 4313, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1919; amd. Sec. 1, Ch. 226, L. 1921; re-en. Sec. 6544, R.C.M. 1921; re-en. Sec. 6544, R.C.M. 1935; R.C.M. 1947, 72-405; amd. Sec. 2042, Ch. 56, L. 2009.

Cross-References

Costs, Title 25, ch. 10.

69-14-710. Tender or deposit of value of animal. If a corporation, association, company, or person owning, controlling, or operating a railroad or branch of a railroad kills or injures an animal as described in 69-14-707 and tenders to the owner or to the owner's agent the amount that the corporation, association, company, or person considers to be the value of the animal or the damage to the animal, or if the railroad, corporation, association, company, or person deposits with the department of livestock that amount for the owner of the animal and the owner or the owner's agent refuses to accept the amount in settlement, then the owner shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage unless the owner recovers in the action more than the amount tendered.

History: En. Sec. 723, 5th Div. Comp. Stat. 1887; re-en. Sec. 956, Civ. C. 1895; re-en. Sec. 4314, Rev. C. 1907; re-en. Sec. 6545, R.C.M. 1921; re-en. Sec. 6545, R.C.M. 1935; amd. Sec. 15, Ch. 315, L. 1974; R.C.M. 1947, 72-406; amd. Sec. 2043, Ch. 56, L. 2009.

69-14-711. Payment of damages to department of livestock. (1) If livestock are killed by railroad corporations in violation of 69-14-701 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within 6 months from the date the animal is killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department shall institute and prosecute, in the name of the state, actions against the railroad or railroad companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department.

(2) The money recovered must be paid to the department and must be held by the department for a period of 2 years after the date of its receipt. If the lawful owner of the animal killed does not present and prove the owner's claim to the net proceeds received from the animal killed within the 2 years, the money must be paid to the state treasurer and credited to the stock estray fund. If the owner of the animal killed proves the owner's claim within the 2 years, the department may pay the claimant the amount of money to which the claimant is entitled for the animal killed by the railroad or railroad company, the damages for which have been collected by the department.

(3) In actions prosecuted under this section for the recovery of the value of livestock killed, the prevailing or successful party shall recover all costs. If the owner of an animal killed has not presented a claim against the railroad or railroad company that caused it to be killed, a settlement made by the department constitutes a bar against an action by the owner of the animal.

History: En. Sec. 1, Ch. 183, L. 1907; Sec. 4315, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1919; re-en. Sec. 6546, R.C.M. 1921; re-en. Sec. 6546, R.C.M. 1935; amd. Sec. 16, Ch. 315, L. 1974; R.C.M. 1947, 72-407; amd. Sec. 2044, Ch. 56, L. 2009.

69-14-712. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R.C.M. 1921; re-en. Sec. 6548, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1949; amd. Sec. 17, Ch. 315, L. 1974; R.C.M. 1947, 72-409.

69-14-713. Violation of provisions dealing with injury to livestock. (1) Except as otherwise provided in this chapter, a person who violates any of the provisions of 69-14-701 through 69-14-711 relating to livestock killed or injured by railroads is guilty of a misdemeanor.

(2) A person violating any of the provisions of 69-14-711 shall upon conviction be punished by a fine of not less than $10 or more than $300, by imprisonment in the county jail for a period of not less than 10 days or more than 60 days, or both.

History: (1)En. Sec. 720, Pen. C. 1895; re-en. Sec. 8561, Rev. C. 1907; re-en. Sec. 11278, R.C.M. 1921; re-en. Sec. 11278, R.C.M. 1935; Sec. 94-35-174, R.C.M. 1947; redes. 72-507 by Sec. 29, Ch. 513, L. 1974; Sec. 72-507, R.C.M. 1947; (2)En. Sec. 4, Ch. 99, L. 1919; amd. Sec. 1, Ch. 49, L. 1921; re-en. Sec. 6549, R.C.M. 1921; re-en. Sec. 6549, R.C.M. 1935; Sec. 72-410, R.C.M. 1947; R.C.M. 1947, 72-410, 72-507; amd. Sec. 51, Ch. 43, L. 1979; amd. Sec. 12, Ch. 235, L. 1997.

69-14-714. Payment of claim — penalty. Upon determining liability for the amount of the value of an animal killed or maimed under the circumstances described in 69-14-701, the railroad corporation shall pay the plaintiff within 30 days. Upon failure to pay the plaintiff within 30 days, interest at a rate of 10% a year accrues on the amount due until the claim is paid.

History: En. Sec. 2, Ch. 363, L. 1993.

69-14-715 through 69-14-720 reserved.

69-14-721. Control of fire hazard along right-of-way. A railroad corporation or railroad company operating a railroad within this state shall keep its railroad track and either side of the track for a reasonable distance within its right-of-way, free from dead grass, weeds, or any dangerous or combustible material. A railroad corporation or company failing to keep its railroad track and each side of the track free of combustible material as specified in this section is liable for any damages on account of fire emanating from trains, track maintenance, or other railroad operations. A railroad corporation or company may not be required to keep free of combustible material, as specified in this section, land that is not a part of its right-of-way.

History: En. Sec. 7, p. 71, L. 1881; re-en. Sec. 719, 5th Div. Comp. Stat. 1887; amd. Sec. 952, Civ. C. 1895; re-en. Sec. 4310, Rev. C. 1907; re-en. Sec. 6551, R.C.M. 1921; re-en. Sec. 6551, R.C.M. 1935; R.C.M. 1947, 72-501; amd. Sec. 1, Ch. 588, L. 1995.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.
Penalty for setting or leaving fire causing damage, 50-63-102.
Liability of offender for damages and costs, 50-63-103.
Reduction of slash and debris along right-of-way, 76-13-407.

69-14-722. Maintenance of fireguards. (1) Every railroad corporation operating its lines of road or any part thereof within this state shall, between April 15 and July 1 in each year, plow in a good and workmanlike manner, covering the sod well, upon each side of its line of road, wherever it passes through a range or grazing country, a continuous strip of not less than 6 feet in width on each side of its track, as a fireguard. Said strip shall, as near as practicable, run parallel with the line or lines of said railroad, and in addition to such plowing, said railroad company shall cause to be burned, between July 15 and September 15 of each year, all the grass and vegetation between the said plowed strips and a line of 50 feet inside said plowed strips. Said plowing shall be not less than 300 feet from the center of the railroad track on each side of same except in cases of cultivated fields, and then such plowing and burning shall be done closer to such railroad but not less than 70 feet from the center of the track.

(2) Such fireguard, so plowed and burned, need not be constructed within the limits of any town, village, or city; in private fields under cultivation; along the line of such railroad whenever the same runs through the mountains; or elsewhere where such plowing or burning would be impracticable. Said fireguard or portion thereof need not be plowed or burned on or through any lands which may be released from the operation of this section by the board of county commissioners of the county wherein such land is situated, by their written certificate of release filed in the office of the county clerk of the county.

(3) If any railroad company fails to comply with any of the provisions of this section, the board of county commissioners of the county wherein such violation occurs shall cause the neglected plowing, burning, or both to be done and may, in a suit to be brought in their name as said board in the district court having jurisdiction, recover double the amount of the cost of such plowing, burning, or both, with reasonable attorney fees to be fixed by the court. Such railroad company shall be liable further for all damages caused by its failure to comply with this section.

History: (1), (2)En. Sec. 1, p. 163, L. 1901; amd. Sec. 1, Ch. 63, L. 1903; re-en. Sec. 4360, Rev. C. 1907; re-en. Sec. 6597, R.C.M. 1921; re-en. Sec. 6597, R.C.M. 1935; Sec. 72-642, R.C.M. 1947; (3)En. Sec. 2, p. 164, L. 1901; amd. Sec. 2, Ch. 63, L. 1903; re-en. Sec. 4361, Rev. C. 1907; re-en. Sec. 6598, R.C.M. 1921; re-en. Sec. 6598, R.C.M. 1935; Sec. 72-643, R.C.M. 1947; R.C.M. 1947, 72-642, 72-643.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.
Penalty for setting or leaving fire causing damage, 50-63-102.
Liability of offender for damages and costs, 50-63-103.

Part 8
Loading Platforms and Spurs
(Repealed)

69-14-801. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 26, L. 1913; re-en. Sec. 3822, R.C.M. 1921; re-en. Sec. 3822, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-145; amd. Sec. 1, Ch. 108, L. 1979; amd. Sec. 13, Ch. 235, L. 1997.

69-14-802. Repealed. Sec. 2, Ch. 108, L. 1979.

History: En. Sec. 2, Ch. 26, L. 1913; re-en. Sec. 3823, R.C.M. 1921; re-en. Sec. 3823, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-146; amd. Sec. 52, Ch. 43, L. 1979.

69-14-803. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 3, Ch. 26, L. 1913; re-en. Sec. 3824, R.C.M. 1921; re-en. Sec. 3824, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-147.

69-14-804. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 4, Ch. 26, L. 1913; re-en. Sec. 3825, R.C.M. 1921; re-en. Sec. 3825, R.C.M. 1935; R.C.M. 1947, 72-148.

69-14-805. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 5, Ch. 26, L. 1913; re-en. Sec. 3826, R.C.M. 1921; re-en. Sec. 3826, R.C.M. 1935; R.C.M. 1947, 72-149; amd. Sec. 130, Ch. 370, L. 1987.

69-14-806 through 69-14-810 reserved.

69-14-811. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 4, Ch. 136, L. 1909; re-en. Sec. 3829, R.C.M. 1921; re-en. Sec. 3829, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-152.

69-14-812. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R.C.M. 1921; re-en. Sec. 3837, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975; R.C.M. 1947, 72-159(part).

69-14-813. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R.C.M. 1921; re-en. Sec. 3837, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975; R.C.M. 1947, 72-159(part).

69-14-814. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-163(part).

Part 9
Grain and Commodity Storage and Transportation

69-14-901. Authorization to locate and erect grain warehouse or elevator on railroad right-of-way. (1) Any person, firm, or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain, including flaxseed, for the public for hire may make application in writing, containing a description of that portion of the right-of-way of the railroad on which the person, firm, or corporation desires to erect a warehouse or elevator, the size and capacity of the warehouse or elevator proposed to be erected, and the time for which it is desired to maintain the warehouse or elevator. The application must be made to the person, firm, or corporation owning, leasing, or operating the railroad at the station or siding, for the right, privilege, and easement of erecting and maintaining for the time stated in the application and for reasonable compensation for the warehouse or elevator upon the right-of-way pertaining to the railway at the siding or station and within and between the outside switches of the yard of the railway station or siding. Upon paying or securing in the manner prescribed in this section reasonable compensation for the right, privilege, and easement, the person, firm, or corporation is absolutely and unconditionally entitled to the right, privilege, and easement.

(2) The application must also state the amount the applicant considers reasonable compensation for the right, privilege, and easement the applicant desires to acquire, and the applicant shall tender and pay to the person, firm, or corporation from whom the easement is sought the sum stated in the application.

(3) If the person, firm, or corporation owning, leasing, or operating the railroad is not willing to allow the portion of the right-of-way selected by the applicant to be appropriated for the stated purpose and the parties cannot agree as to the quantity and location of the land upon which the grain warehouse or grain elevator is to be erected, the matter must be determined by the district court in the same manner and by the same proceeding for determining the amount of compensation to be paid when the parties cannot agree as to the amount.

History: (1), (3)En. Sec. 1, Ch. 43, L. 1913; re-en. Sec. 6638, R.C.M. 1921; re-en. Sec. 6638, R.C.M. 1935; Sec. 88-201, R.C.M. 1947; (2)En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; Sec. 88-202, R.C.M. 1947; R.C.M. 1947, 88-201, 88-202(part); amd. Sec. 2045, Ch. 56, L. 2009.

Cross-References

Easements, Title 70, ch. 17, part 1.

Warehouse operators of agricultural commodities, Title 80, ch. 4, part 5.

69-14-902. Decision on application by railroad. It shall be the duty of any person, firm, or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of 69-14-901 through 69-14-911, within 30 days after the receipt of such application, to notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege, and easement sought to be acquired. In case such person, firm, or corporation fails to notify the applicant within said 30 days, such person, firm, or corporation shall be deemed to have accepted said amount, and upon the payment or tender thereof, said applicant shall be deemed to have acquired the right, privilege, and easement applied for.

History: En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; R.C.M. 1947, 88-202(part).

69-14-903. Court action to resolve differences. (1) In case the amount so named in the application and tendered is not accepted and the parties cannot agree on the amount to be paid for such right, privilege, and easement, the same shall be ascertained, assessed, and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege, and easement sought is situated. The court is hereby given full jurisdiction in the premises and shall at all times be deemed open and in session for the purposes of 69-14-901 through 69-14-911.

(2) Proceedings in the district court shall be instituted and carried on as provided in 69-14-904.

History: (1)En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; Sec. 88-202, R.C.M. 1947; (2)En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; Sec. 88-203, R.C.M. 1947; R.C.M. 1947, 88-202(part), 88-203(part).

69-14-904. Procedure in district court. (1) The parties seeking the right, privilege, and easement aforesaid shall present to and file with the district court a petition in writing and under oath, specifying and describing the right, privilege, and easement sought, the time for which the same is sought, and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor.

(2) A copy of the application for such privilege shall be attached to said petition, and thereupon it shall be at once the duty of the court by its order in writing to fix a time not more than 30 days thereafter within which the person, firm, or corporation so owning, managing, or controlling such railroad shall appear and join issue in said proceeding. Such notice shall be served as a summons is served in civil actions and shall be ample notice to the parties so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceeding.

(3) The manner of joining issue and the procedure at the trial shall be the same as that in any other civil action at law.

(4) The trial of such issue shall be expedited by the court as much as possible. At the trial the court or jury, as the case may be, shall find and assess the compensation, both in the form of an annual rental and in the form of a gross sum, for the right, privilege, and easement sought. Immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found. In case such election is not made by said party, then the other party to the proceedings may make such election. After election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege, and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid and for the time therein specified. Thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege, and easement aforesaid.

History: En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; R.C.M. 1947, 88-203(part).

Cross-References

Contents of writ of execution, Title 25, ch. 13, part 3.
Easements, Title 70, ch. 17, part 1.

69-14-905. Right to supreme court review. Within 30 days after the entry of said judgment, as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court. Such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege, and easement asked for by the petition and conferred by the judgment if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Either party may appeal from that part of the judgment determining the quantity and location of the land upon which such warehouse or elevator is to be erected, and in the event of such appeal, the judgment shall be suspended pending the appeal.

History: En. Sec. 4, Ch. 43, L. 1913; re-en. Sec. 6641, R.C.M. 1921; re-en. Sec. 6641, R.C.M. 1935; R.C.M. 1947, 88-204(part).

69-14-906. Payment of court costs. Costs and disbursements, as in civil actions, in each court shall be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party. If the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party.

History: En. Sec. 4, Ch. 43, L. 1913; re-en. Sec. 6641, R.C.M. 1921; re-en. Sec. 6641, R.C.M. 1935; R.C.M. 1947, 88-204(part).

Cross-References

Costs, Title 25, ch. 10.

69-14-907. Elevators and warehouses considered public. All elevators and warehouses erected and maintained under the provisions of 69-14-901 through 69-14-911 shall be deemed public elevators and public warehouses and shall be subject to legislative control.

History: En. Sec. 5, Ch. 43, L. 1913; re-en. Sec. 6642, R.C.M. 1921; re-en. Sec. 6642, R.C.M. 1935; R.C.M. 1947, 88-205.

Cross-References

Warehouse operators of agricultural commodities, Title 80, ch. 4, part 5.

69-14-908. Prompt payment of rental required. In case the annual rental is elected, the same shall be paid yearly in advance, and if not so paid after 30 days' default, the right, privilege, and easement aforesaid shall be absolutely forfeited.

History: En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; R.C.M. 1947, 88-203(part).

69-14-909. Time limit for construction of elevator or warehouse. Any person, firm, or corporation availing itself of the provisions of 69-14-901 through 69-14-911 shall, within 60 days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court, commence the erection of the warehouse or elevator mentioned in the application and complete the same within 90 days thereafter. In case of failure to comply with the provisions of this section, such person or persons shall be deemed to have abandoned the right acquired, and the part or portion of the railroad right-of-way described in the application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of 69-14-901 through 69-14-911.

History: En. Sec. 6, Ch. 43, L. 1913; re-en. Sec. 6643, R.C.M. 1921; re-en. Sec. 6643, R.C.M. 1935; R.C.M. 1947, 88-206.

69-14-910. Connection of railroad to elevator or warehouse. (1) Every railroad company or corporation organized under the laws of this state or doing business therein shall, upon application in writing, provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right-of-way at stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator, without reference to its size, cost, or capacity, where grain is or may be stored. Such railroad company shall not be required to construct or furnish any sidetracks except upon its own land or right-of-way. The reasonable cost of the construction of such sidetracks and connections, except the cost of the rails and fastenings, shall be paid by the person or persons for whose benefit such sidetracks are provided or connections made.

(2) Where stations are 10 miles or more apart, the railroad company, when required to do so by the public service commission, shall construct and maintain a sidetrack for the use of shippers between such stations.

History: En. Sec. 7, Ch. 43, L. 1913; re-en. Sec. 6644, R.C.M. 1921; re-en. Sec. 6644, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 88-207(part).

69-14-911. Location of facility. Such elevators and warehouses shall not be constructed within 100 feet of any existing structure and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road.

History: En. Sec. 7, Ch. 43, L. 1913; re-en. Sec. 6644, R.C.M. 1921; re-en. Sec. 6644, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 88-207(part).

69-14-912 through 69-14-920 reserved.

69-14-921. Suitable cars to be furnished for shipment of grain and other commodities in bulk. (1) All cars furnished by railroad or railway companies for the transportation of grain or other commodities in bulk must be constructed to prevent leakage when such commodities are placed or hauled in the cars. It is the duty of all railroad or railway companies to furnish cars in the required condition.

(2) Whenever cars placed for loading grain or other commodities in bulk are found to be in a condition that will not afford safe transportation for commodities, the railroad or railway company shall, upon written complaint to the agent or other person in authority by the shipper or the shipper's representative who proposes to load the car or cars and within 24 hours, cause the car or cars to be properly cleaned and put in repair to allow safe transportation for the commodity to be shipped.

History: (1)En. Sec. 1, Ch. 52, L. 1917; re-en. Sec. 6613, R.C.M. 1921; re-en. Sec. 6613, R.C.M. 1935; Sec. 72-656, R.C.M. 1947; (2)En. Sec. 2, Ch. 52, L. 1917; re-en. Sec. 6614, R.C.M. 1921; re-en. Sec. 6614, R.C.M. 1935; Sec. 72-657, R.C.M. 1947; R.C.M. 1947, 72-656, 72-657; amd. Sec. 14, Ch. 235, L. 1997.

69-14-922. Action by shipper to render cars suitable. (1) If a railroad or railway company fails within 24 hours after written complaint has been made by the shipper or the shipper's representative to clean and prepare a car or cars, then the shipper or the shipper's representative may properly and safely clean and prepare the car or cars. Preparing a car or cars may not include repairs covered in 49 CFR, parts 200 through 399. The railroad or railway company shall pay for the labor expended in the cleaning or preparation and the actual cost of material used.

(2) If a car or cars are placed at a station or siding where there is no representative of the railroad or railway company upon whom complaint may be served, then the shipper or the shipper's representative may at once clean and repair the cars and must be paid for the labor and material expended, as provided in subsection (1).

History: (1)En. Sec. 3, Ch. 52, L. 1917; re-en. Sec. 6615, R.C.M. 1921; re-en. Sec. 6615, R.C.M. 1935; Sec. 72-658, R.C.M. 1947; (2)En. Sec. 4, Ch. 52, L. 1917; re-en. Sec. 6616, R.C.M. 1921; re-en. Sec. 6616, R.C.M. 1935; Sec. 72-659, R.C.M. 1947; R.C.M. 1947, 72-658, 72-659; amd. Sec. 15, Ch. 235, L. 1997.

69-14-923. Demurrage not to accrue during repairs. It is further provided that no demurrage shall accrue or be collected for the time elapsing while such car or cars are being repaired or cleaned or coopered in accordance herewith.

History: En. Sec. 5, Ch. 52, L. 1917; re-en. Sec. 6617, R.C.M. 1921; re-en. Sec. 6617, R.C.M. 1935; R.C.M. 1947, 72-660.

69-14-924. Liability of railroad for repairs. A person making the repairs upon or cleaning or coopering the cars of any railroad or railway company as provided in this part may recover the amounts expended in an action at law upon the refusal of the railroad or railway company to reimburse the person.

History: En. Sec. 6, Ch. 52, L. 1917; re-en. Sec. 6618, R.C.M. 1921; re-en. Sec. 6618, R.C.M. 1935; R.C.M. 1947, 72-661; amd. Sec. 2046, Ch. 56, L. 2009.

69-14-925. Enforcement of provisions related to suitable cars for commodity shipments. It is hereby made the duty of the commission to enforce the provisions of 69-14-921 through 69-14-924.

History: En. Sec. 7, Ch. 52, L. 1917; re-en. Sec. 6619, R.C.M. 1921; re-en. Sec. 6619, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-662.

69-14-926 through 69-14-930 reserved.

69-14-931. Definitions. As used in 69-14-932 and this section, the following definitions apply:

(1) "Fair market value" means:

(a) the price negotiated between the parties under 69-14-932; or

(b) the appraised value as determined by a certified appraisal under 69-14-932.

(2) "Leaseholder" means a person who holds a lease or permit with respect to land adjacent to a railroad right-of-way and who has constructed or owns buildings on the land that have an appraised value of $5,000 or more.

(3) "Right-of-way" means land upon which a railroad has or has had tracks.

History: En. Sec. 1, Ch. 814, L. 1991.

69-14-932. First right to purchase or match offer — lease preference — negotiation process — exception. (1) A person or entity that has a leasehold site between a point 8.5 feet from the centerline of the track nearest the edge of the right-of-way and 300 feet from the track centerline and that uses the leasehold for transporting grain, seed, or related agricultural input commodities, regardless of the status of train operations, has a right of first refusal to purchase the land if the owner seeks to sell the land or transfer the leasehold estate.

(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment or other material breach of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder.

(3) The owner of the land may not sell or offer for sale an interest in the leased land or dispossess the leaseholder for reasons other than nonpayment or other material breach of the lease unless the owner first extends to the leaseholder a written offer to sell the leased land to the leaseholder at fair market value. The leaseholder shall respond to the offer within 60 days of receipt of the offer.

(4) The owner shall negotiate in good faith with the leaseholder for a period not to exceed 90 days following the leaseholder's response to the written offer provided for in subsection (3). The land may not be sold or transferred during the response and negotiation periods.

(5) (a) If the owner and the leaseholder cannot agree on the fair market value, they shall appoint a certified appraiser to establish the fair market value.

(b) If the owner and leaseholder cannot agree on an appraiser, each shall appoint a certified appraiser who shall make an independent appraisal. If the appraisals are within 5% of each other, the average of the two appraisals constitutes the fair market value.

(c) If the two appraisals differ by more than 5%, the two appraisers shall appoint a third certified appraiser whose appraisal establishes the fair market value.

(d) If the leaseholder fails to close the purchase of the leasehold estate for any reason within 45 days after the fair market value of the land has been established by the appraisal process provided for in this section, the right of first refusal is extinguished and the owner is free to transfer the property to a person or entity other than the leaseholder.

(e) The owner may transfer a title under this section by quitclaim deed rather than warranty deed.

(6) This section does not apply to the sale of an entire operating railroad line by one operating railroad to another entity for the purpose of operating a railroad.

History: En. Sec. 2, Ch. 814, L. 1991; amd. Sec. 2047, Ch. 56, L. 2009.

Part 10
Railroad Personnel

Part Cross-References

Licensure of plumbing work in railroad not required, 37-69-102.
Limitation of hours worked in tunnel, 39-4-103.
Workers' compensation not applicable to certain railroad workers, 39-71-401.
Penalty for derailment of railroad cars, 45-8-113.
Penalty for abandonment of animal on railroad, 45-8-211.
Deaf and blind persons to be given equal accommodations, 49-4-211.

69-14-1001. Repealed. Sec. 10, Ch. 104, L. 2015.

History: En. Sec. 1, Ch. 377, L. 1973; R.C.M. 1947, 72-169; amd. Sec. 53, Ch. 43, L. 1979; amd. Sec. 1, Ch. 436, L. 1983.

69-14-1002. Compensation of employees on removal of railroad division point or terminal. (1) Except as provided in subsection (2), when any railroad or railway company operating its line of road in, into, or through the state moves any of its division points or terminals, it is liable to any employee of the railroad or railway company for any damage sustained by the employee by reason of any decrease in value of any real property actually occupied by the employee as the employee's place of residence that is caused by the removal of the division point or terminal. However, the employee must have a freehold estate in the property. The damages are collectible in any court of competent jurisdiction.

(2) When any railroad or railway company in good faith determines upon a change or removal of any division point or terminal and in good faith posts prominently at its station house, shops, and yards a statement of its intention to do so in a manner that gives reasonable notice to the employee, it is not liable, as provided in subsection (1), for any decrease in value of any interest in any property purchased after the time of the posting if the division point or terminal is changed or removed within 6 months after the date of the posting.

History: (1)En. Sec. 1, Ch. 159, L. 1921; re-en. Sec. 6623, R.C.M. 1921; re-en. Sec. 6623, R.C.M. 1935; Sec. 72-666, R.C.M. 1947; (2)En. Sec. 2, Ch. 159, L. 1921; re-en. Sec. 6624, R.C.M. 1921; re-en. Sec. 6624, R.C.M. 1935; Sec. 72-667, R.C.M. 1947; R.C.M. 1947, 72-666, 72-667; amd. Sec. 2048, Ch. 56, L. 2009.

69-14-1003. Railroad personnel as law officers. A conductor, engineer, or other person in charge of the operation of cars, trains, or locomotives upon any railroad is, while engaged or employed, a public executive officer of the class of peace officers and of the grade of constable in each county in which the train, cars, or locomotives are located and has the same authority as other peace officers to, with or without a warrant, arrest and prosecute persons trespassing or illegally obtaining passage on the railroad. The railroad personnel mentioned in this section are not entitled to receive fees for any arrest or prosecution that may be made or prosecuted under this section. None of the railroad personnel mentioned in this section are authorized to hold the office or exercise its functions unless at the time they are citizens of the United States and have been citizens of this state for at least 1 year preceding their exercising the functions of the office.

History: En. Sec. 3, p. 150, L. 1899; re-en. Sec. 8884, Rev. C. 1907; re-en. Sec. 11570, R.C.M. 1921; re-en. Sec. 11570, R.C.M. 1935; Sec. 94-35-203, R.C.M. 1947; redes. 72-672 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 72-672; amd. Sec. 54, Ch. 43, L. 1979; amd. Sec. 2049, Ch. 56, L. 2009.

Cross-References

Railroad corporation special peace officers, Title 44, ch. 4, part 9.

69-14-1004. Penalty for being under the influence while engaged in train operations. A person who is under the influence, as provided in 49 CFR 383.51, of alcohol or a drug while in charge of a locomotive engine while as conductor or driver upon any railroad car or train or while acting as train dispatcher or as telegraph operator receiving or transmitting dispatches in relation to the movement of trains is guilty of a misdemeanor.

History: En. Sec. 690, Pen. C. 1895; re-en. Sec. 8521, Rev. C. 1907; re-en. Sec. 11253, R.C.M. 1921; Cal. Pen. C. Sec. 391; re-en. Sec. 11253, R.C.M. 1935; Sec. 94-35-109, R.C.M. 1947; redes. 72-671 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 72-671; amd. Sec. 16, Ch. 235, L. 1997.

Cross-References

Penalty for misdemeanor, 46-18-212.

69-14-1005. Medical aid for injured train operator. (1) If a railroad train operator or employee of any railroad doing business in this state is injured during the operator's or employee's regular course of employment, any employee of the railroad is empowered and authorized to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat the injured train operator or employee during and until the time that one of the regularly employed and paid physicians or surgeons of the railroad corporation is able to render service.

(2) If the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired as provided in this section, the physician or surgeon must be compensated and paid a reasonable fee for the services performed.

(3) If a railroad corporation refuses or neglects to pay for the services of a physician as provided in subsection (2) within a reasonable time after the physician or surgeon has rendered the services, the railroad corporation is guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 95, L. 1909; amd. Sec. 1, Ch. 45, L. 1921; re-en. Sec. 6602, R.C.M. 1921; re-en. Sec. 6602, R.C.M. 1935; Sec. 72-645, R.C.M. 1947; (2)En. Sec. 2, Ch. 95, L. 1909; re-en. Sec. 6603, R.C.M. 1921; re-en. Sec. 6603, R.C.M. 1935; Sec. 72-646, R.C.M. 1947; (3)En. Sec. 3, Ch. 95, L. 1909; re-en. Sec. 6604, R.C.M. 1921; re-en. Sec. 6604, R.C.M. 1935; Sec. 72-647, R.C.M. 1947; R.C.M. 1947, 72-645, 72-646, 72-647; amd. Sec. 2050, Ch. 56, L. 2009.

Cross-References

Good Samaritan law, 27-1-714.

Consent to emergency treatment, 41-1-405.

69-14-1006. Liability for death or injury to railroad employees. (1) A person or corporation operating a railroad in this state is liable in damages to any person suffering injury while the person is employed by the person or corporation operating the railroad or, in case of the death of an employee, instantaneously or otherwise, to the employee's personal representative, for the benefit of the surviving spouse and children of the employee and, if none, then of the employee's parents and, if none, then of the next of kin dependent upon the employee. The damages must be for an injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of the person or corporation operating the railroad, in or about the handling, movement, or operation of any train, engine, or car on or over the railroad or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(2) (a) In all actions brought against any person or corporation operating the railroad, under or by virtue of any of the provisions of this section, the fact that the employee may have been guilty of contributory negligence may not bar a recovery, but the damages must be diminished by the jury in proportion to the amount of negligence attributable to the employee. However, an employee who is injured or killed may not be held to have been guilty of contributory negligence in any case in which the violation by the person or corporation operating the railroad of any statute enacted for the safety of employees contributed to the injury or death of the employee.

(b) An employee of a person or corporation operating the railroad may not be considered to have assumed any risk incident to the employee's employment when the risk arises by reason of the negligence of the employer or of any person in the service of the employer.

(3) A contract, rule, or device, the purpose or intent of which is to enable a person or corporation operating a railroad to exempt itself from any liability created by this section, is, to that extent, void. In an action brought against a person or corporation operating a railroad under or by virtue of any of the provisions of this section, the person or corporation may set off any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled to the payment on account of the injury or death for which the action is brought.

History: (1)En. Sec. 1, Ch. 29, L. 1911; re-en. Sec. 6605, R.C.M. 1921; re-en. Sec. 6605, R.C.M. 1935; Sec. 72-648, R.C.M. 1947; (2)(a)En. Sec. 2, Ch. 29, L. 1911; re-en. Sec. 6606, R.C.M. 1921; re-en. Sec. 6606, R.C.M. 1935; Sec. 72-649, R.C.M. 1947; (2)(b)En. Sec. 3, Ch. 29, L. 1911; re-en. Sec. 6607, R.C.M. 1921; re-en. Sec. 6607, R.C.M. 1935; Sec. 72-650, R.C.M. 1947; (3)En. Sec. 4, Ch. 29, L. 1911; re-en. Sec. 6608, R.C.M. 1921; re-en. Sec. 6608, R.C.M. 1935; Sec. 72-651, R.C.M. 1947; R.C.M. 1947, 72-648, 72-649, 72-650, 72-651; amd. Sec. 2051, Ch. 56, L. 2009.

Cross-References

Comparative negligence — extent to which contributory negligence bars recovery, 27-1-702.

Part 11
Sale or Transfer of Railroad Line

69-14-1101. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means a person, corporation, association, business entity, labor organization, the state of Montana or any of its political subdivisions, or any other entity that acquires a line of railroad, by purchase, lease, or other agreement, to continue the commercial transportation of goods or passengers.

(2) "Labor organization" means any organization or association of any kind in which employees participate and that exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(3) "Seller" means a person, corporation, association, or business entity that transfers a line of railroad by sale, lease, or other agreement.

(4) "Transaction" means the limited purchase, sale, or transfer of part of a line of railroad that will be operated by a common rail carrier.

History: En. Sec. 1, Ch. 653, L. 1987.

69-14-1102. Conditions for transfer of line of railroad. Thirty days prior to filing with the federal surface transportation board of an application to purchase, sell, or transfer any section of a line of railroad, the seller and buyer shall:

(1) file a notice of intent and other information, as described in 69-14-1103, with the attorney general and the commission; and

(2) require representatives to attend meetings, upon reasonable notice, with the attorney general and the commission to respond to questions and requests for information on the proposed transaction directly related to the requirements of 69-14-1103.

History: **En. Sec. 2, Ch. 653, L. 1987; amd. Sec. 9, Ch. 104, L. 2015.**

69-14-1103. Notice of intent. (1) The notice of intent filed in accordance with 69-14-1102 must contain:

(a) a complete and accurate description of the identities of the buyer and seller; and

(b) a thorough description of the railroad line to be transferred.

(2) A general description of the terms of the proposed transaction and any labor agreements must be attached to the notice of intent.

History: **En. Sec. 3, Ch. 653, L. 1987.**

Part 12
Railroad Vandalism Prevention Act

69-14-1201. Short title. This part may be cited as the "Railroad Vandalism Prevention Act".

History: **En. Sec. 1, Ch. 432, L. 2001.**

69-14-1202. Purpose. The purpose of this part is to:

(1) better inform the public of current widespread vandalism that takes place on railroad property and the cost of that vandalism that must ultimately be borne by shippers;

(2) prevent accidents and injuries to persons who enter railroad property;

(3) prevent acts of vandalism to railroad property that affect the health, safety, and welfare of the traveling public, the neighboring community, and railroad employees;

(4) protect railroad property and freight in transit; and

(5) otherwise enhance the safety of transportation by railroad.

History: **En. Sec. 2, Ch. 432, L. 2001.**

69-14-1203. Definitions. As used in this part, the following definitions apply:

(1) "Bodily injury" means:

(a) a cut, abrasion, bruise, burn, or disfigurement;

(b) physical pain;

(c) illness;

(d) impairment of the function of or loss of a bodily member, organ, or mental faculty; or

(e) any other injury to the body, no matter how temporary.

(2) "Enter railroad property" includes but is not limited to performing vandalism or other unlawful activity on railroad property.

(3) (a) "Railroad" means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways.

(b) Railroad does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(4) "Railroad carrier" means an entity that provides rail transportation.

(5) (a) "Railroad property" means all tangible real and personal property owned, leased, or operated by a railroad carrier, including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier, including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device.

(b) Railroad property does not include a railroad carrier's administrative buildings or offices, office equipment, or intangible property such as computer software or other information.

(6) "Right-of-way" means the track or roadbed owned, leased, or operated by a railroad carrier that is located on either side of its tracks and that is readily recognizable to a reasonable person as being railroad property or is reasonably identified as railroad property by fencing or appropriate signs.

(7) "Serious bodily injury" means bodily injury that involves:
(a) a substantial risk of death;
(b) extreme physical pain;
(c) protracted and obvious disfigurement; or
(d) protracted impairment of the function of or loss of a bodily member, organ, or mental faculty.

(8) "Vandalism to railroad property" means committing an act that may cause damage to railroad property or bodily injury to another person. This includes but is not limited to:
(a) taking, removing, defacing, altering, marking with graffiti, or otherwise marking a railroad sign, placard, or marker;
(b) throwing a rock, baseball, or other dangerous object at a locomotive, railroad car, or train;
(c) dropping a brick or other dangerous object from a bridge or other overpass onto a railroad right-of-way;
(d) shooting a firearm or other dangerous weapon at a locomotive, railroad car, or train;
(e) removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal on a railroad owned, leased, or operated by a railroad carrier, without consent of the railroad carrier;
(f) interfering or tampering with or obstructing in any way any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier, without consent of the railroad carrier; or
(g) taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier, without the consent of the railroad carrier.

(9) "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains and where railroad cars, locomotives, and other rolling stock are kept when not in use or when awaiting repairs.

History: En. Sec. 3, Ch. 432, L. 2001.

69-14-1204. Stowing away on railroad property. (1) A person commits the offense of stowing away on railroad property if the person knowingly and without lawful authority or consent is on, occupies, or rides on the outside of a train or on the inside of a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container car.

(2) A person convicted of the offense of stowing away on railroad property shall be fined an amount not to exceed $1,000 or be incarcerated in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 4, Ch. 432, L. 2001.

69-14-1205. Intentional vandalism to railroad property. (1) A person commits the offense of intentional vandalism to railroad property if the person knowingly or purposely vandalizes railroad property.

(2) A person convicted of intentional vandalism to railroad property must be ordered to make restitution to the railroad carrier in the amount of the cost to repair any railroad property damaged, the cost of any train or shipment delay, and the cost of any accident or damage resulting from the vandalism.

(3) (a) A person convicted of the offense of intentional vandalism to railroad property in which the damage to railroad property does not exceed $1,000 and in which there is no bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed $1,000 or be incarcerated in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of the offense of intentional vandalism to railroad property in which the damage to railroad property exceeds $1,000 or in which there is bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed $10,000 or be incarcerated for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of intentional vandalism to railroad property that results in serious bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed $20,000 or be incarcerated in a state prison for a term not to exceed 20 years, or both.

(d) A person convicted of the offense of intentional vandalism to railroad property that results in the death of another person as a result of the offender's actions shall be fined an amount not to exceed $50,000 or be incarcerated in a state prison for a term not to exceed 40 years, or both.

History: En. Sec. 5, Ch. 432, L. 2001; amd. Sec. 1, Ch. 490, L. 2003.

69-14-1206. Theft of railroad freight — receiving stolen railroad freight. (1) A person commits the offense of theft of railroad freight if the person takes railroad freight by theft, as established in 45-6-301(1).

(2) A person commits the offense of receiving stolen railroad freight if the person obtains stolen railroad freight by theft, as established in 45-6-301(3).

(3) A person convicted of the offense of theft of railroad freight or the offense of receiving stolen railroad freight shall be fined an amount not to exceed $5,000 or be incarcerated for a term not to exceed 5 years, or both.

History: En. Sec. 6, Ch. 432, L. 2001.

TITLE 70
PROPERTY

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Title Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Prohibited transactions with foreign adversaries, 35-30-103.

CHAPTER 1
PROPERTY IN GENERAL REAL AND PERSONAL

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Part 1
General Provisions

70-1-101. Property defined — ownership. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

History: En. Sec. 1070, Civ. C. 1895; re-en. Sec. 4421, Rev. C. 1907; re-en. Sec. 6663, R.C.M. 1921; Cal. Civ. C. Sec. 654; Field Civ. C. Sec. 159; re-en. Sec. 6663, R.C.M. 1935; R.C.M. 1947, 67-201.

Cross-References

Real estate defined, 37-51-102.

70-1-102. Ownership public or private — state as private proprietor. All property has an owner, whether that owner is the state and the property public or the owner an individual and the property private. The state may also hold property as a private proprietor.

History: En. Sec. 1090, Civ. C. 1895; re-en. Sec. 4431, Rev. C. 1907; re-en. Sec. 6673, R.C.M. 1921; Cal. Civ. C. Sec. 669; Field Civ. C. Sec. 168; re-en. Sec. 6673, R.C.M. 1935; R.C.M. 1947, 67-301.

Cross-References

General rights of state over property, Title 70, ch. 1, part 2.
State Lands, Title 77.

70-1-103. Owner entitled to products and accessions. The owner of a thing also owns all of its products and accessions.

History: En. Sec. 1170, Civ. C. 1895; re-en. Sec. 4472, Rev. C. 1907; re-en. Sec. 6714, R.C.M. 1921; Cal. Civ. C. Sec. 732; Field Civ. C. Sec. 209; re-en. Sec. 6714, R.C.M. 1935; R.C.M. 1947, 67-415.

Cross-References

Seizures of property related to controlled substances, Title 44, ch. 12.
Property — acquired by accession, 70-1-110.
Accession and intermixture of personal property, Title 70, ch. 4.
Increase of thing during period of loan, 70-7-103.
Increase of thing loaned for exchange, 70-7-203.

70-1-104. In what things property interests may exist. There may be ownership of:

(1) all inanimate things which are capable of appropriation or of manual delivery;

(2) all domestic animals;

(3) all obligations;

(4) such products of labor or skill as the composition of an author, the goodwill of a business, trademarks, and signs; and

(5) rights created or granted by statute.

History: En. Sec. 1071, Civ. C. 1895; re-en. Sec. 4422, Rev. C. 1907; re-en. Sec. 6664, R.C.M. 1921; Cal. Civ. C. Sec. 655; Field Civ. C. Sec. 160; re-en. Sec. 6664, R.C.M. 1935; R.C.M. 1947, 67-202.

Cross-References

Seizures of property related to controlled substances, Title 44, ch. 12.
Prohibition of possession of wild animals — exceptions, 50-23-102.

70-1-105. Real or personal. Property is either:

(1) real or immovable; or

(2) personal or movable.

History: En. Sec. 1073, Civ. C. 1895; re-en. Sec. 4424, Rev. C. 1907; re-en. Sec. 6666, R.C.M. 1921; Cal. Civ. C. Sec. 657; Field Civ. C. Sec. 162; re-en. Sec. 6666, R.C.M. 1935; R.C.M. 1947, 67-206.

70-1-106. Real property defined. Real or immovable property consists of:

(1) land;

(2) that which is affixed to land, including a manufactured home declared an improvement to real property under 15-1-116;

(3) that which is incidental or appurtenant to land;
(4) that which is immovable by law.

History: En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R.C.M. 1921; Cal. Civ. C. Sec. 658; Based on Field Civ. C. Sec. 163; re-en. Sec. 6667, R.C.M. 1935; R.C.M. 1947, 67-207; amd. Sec. 3, Ch. 450, L. 2005.

70-1-107. Choice of law as to real property. Real property within this state is governed by the law of this state, except where the title is in the United States.

History: En. Sec. 1200, Civ. C. 1895; re-en. Sec. 4480, Rev. C. 1907; re-en. Sec. 6722, R.C.M. 1921; Cal. Civ. C. Sec. 755; re-en. Sec. 6722, R.C.M. 1935; R.C.M. 1947, 67-501.

70-1-108. Personal property defined. (1) Every kind of property that is not real is personal.

(2) Digital assets are considered personal property.

(3) For the purposes of this section, "digital assets" means cryptocurrencies, natively electronic assets, including stable coins and nonfungible tokens, and other digital-only assets that confer economic, proprietary, or access rights or powers.

History: En. Sec. 1079, Civ. C. 1895; re-en. Sec. 4430, Rev. C. 1907; re-en. Sec. 6672, R.C.M. 1921; Cal. Civ. C. Sec. 663; Field Civ. C. Sec. 167; re-en. Sec. 6672, R.C.M. 1935; R.C.M. 1947, 67-212; amd. Sec. 5, Ch. 344, L. 2023.

70-1-109. Choice of law as to personal property. If there is no law to the contrary in the place where personal property is situated, it is considered to follow the person of its owner and is governed by the law of the owner's domicile.

History: En. Sec. 1340, Civ. C. 1895; re-en. Sec. 4556, Rev. C. 1907; re-en. Sec. 6803, R.C.M. 1921; Cal. Civ. C. Sec. 946; Field Civ. C. Sec. 364; re-en. Sec. 6803, R.C.M. 1935; R.C.M. 1947, 67-1101; amd. Sec. 2052, Ch. 56, L. 2009.

70-1-110. How property acquired. Property is acquired by:
(1) occupancy;
(2) accession;
(3) transfer;
(4) will; or
(5) succession.

History: En. Sec. 1380, Civ. C. 1895; re-en. Sec. 4569, Rev. C. 1907; re-en. Sec. 6816, R.C.M. 1921; Cal. Civ. C. Sec. 1000; re-en. Sec. 6816, R.C.M. 1935; R.C.M. 1947, 67-1201.

Cross-References

Uniform Probate Code — intestacy, wills, and donative transfers, Title 72, ch. 2.

Part 2
General Rights of State Over Property

Part Cross-References

Prohibited transactions with foreign adversaries, 35-30-103.

70-1-201. Original and ultimate title. The original and ultimate right of all property, real and personal, within the jurisdiction of this state and not belonging to the United States is in the people of the state.

History: En. Sec. 60, Pol. C. 1895; re-en. Sec. 26, Rev. C. 1907; re-en. Sec. 27, R.C.M. 1921; Cal. Pol. C. Sec. 40; re-en. Sec. 27, R.C.M. 1935; R.C.M. 1947, 67-101.

Cross-References

Prohibited transactions with foreign adversaries, 35-30-103.

70-1-202. Property of the state — what included. The state is the owner of:
(1) all land below the water of a navigable lake or stream;
(2) all property lawfully appropriated by it to its own use;
(3) all property dedicated or granted to the state; and
(4) all property of which there is no other owner.

History: En. Sec. 1091, Civ. C. 1895; re-en. Sec. 4432, Rev. C. 1907; re-en. Sec. 6674, R.C.M. 1921; Cal. Civ. C. Sec. 670; Based on Field Civ. C. Sec. 169; re-en. Sec. 6674, R.C.M. 1935; R.C.M. 1947, 67-302.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Public land trust — disposition, Art. X, sec. 11, Mont. Const.
Access to surface waters by public bridge or county road right-of-way, 23-2-312.
State Lands, Title 77.
Ownership records of state-owned land, Title 77, ch. 1, part 7.

70-1-203. Escheat. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state. All property within the limits of this state which does not belong to any person belongs to the state.

History: **En. Sec. 61, Pol. C. 1895; re-en. Sec. 27, Rev. C. 1907; re-en. Sec. 28, R.C.M. 1921; Cal. Pol. C. Sec. 41; re-en. Sec. 28, R.C.M. 1935; R.C.M. 1947, 67-102.**

Cross-References

Disposition of unclaimed funds from liquidated bank, 32-1-537.
Escheated estates, Title 72, ch. 14.

70-1-204. Acquisition by taxation. The state or any county thereof may acquire property by taxation in the modes authorized by law.

History: **En. Sec. 62, Pol. C. 1895; re-en. Sec. 28, Rev. C. 1907; re-en. Sec. 29, R.C.M. 1921; Cal. Pol. C. Sec. 43; re-en. Sec. 29, R.C.M. 1935; R.C.M. 1947, 67-103.**

Cross-References

Tax liens, Title 15, ch. 17.

70-1-205. Eminent domain. The state may acquire or authorize others to acquire title to property, real or personal, for public use, in the cases and in the modes provided in chapter 30 of this title.

History: **En. Sec. 63, Pol. C. 1895; re-en. Sec. 29, Rev. C. 1907; re-en. Sec. 30, R.C.M. 1921; Cal. Pol. C. Sec. 44; re-en. Sec. 30, R.C.M. 1935; R.C.M. 1947, 67-104.**

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

Part 3
Kinds of Ownership Interests

70-1-301. Interests in real property specially named elsewhere. In respect to real or immovable property, the interests mentioned in this part are denominated estates and are specially named and classified in 70-15-202 through 70-15-216, in Title 70, chapter 15, part 3, in Title 70, chapter 16, in 70-17-101 through 70-17-111, and in Title 72, chapter 38, part 8.

History: **En. Sec. 1122, Civ. C. 1895; re-en. Sec. 4455, Rev. C. 1907; re-en. Sec. 6697, R.C.M. 1921; Cal. Civ. C. Sec. 701; Field Civ. C. Sec. 193; re-en. Sec. 6697, R.C.M. 1935; R.C.M. 1947, 67-327; amd. Sec. 87, Ch. 51, L. 1999.**

70-1-302. Ownership — absolute or qualified. The ownership of property is either:
(1) absolute; or
(2) qualified.

History: **En. Sec. 1100, Civ. C. 1895; re-en. Sec. 4433, Rev. C. 1907; re-en. Sec. 6675, R.C.M. 1921; Cal. Civ. C. Sec. 678; Field Civ. C. Sec. 171; re-en. Sec. 6675, R.C.M. 1935; R.C.M. 1947, 67-303.**

70-1-303. When ownership absolute. The ownership of property is absolute when a single person has the absolute dominion over it and may use it or dispose of it according to the person's pleasure, subject only to general laws.

History: **En. Sec. 1101, Civ. C. 1895; re-en. Sec. 4434, Rev. C. 1907; re-en. Sec. 6676, R.C.M. 1921; Cal. Civ. C. Sec. 679; Field Civ. C. Sec. 172; re-en. Sec. 6676, R.C.M. 1935; R.C.M. 1947, 67-304; amd. Sec. 2053, Ch. 56, L. 2009.**

70-1-304. When ownership qualified. The ownership of property is qualified when:
(1) it is shared with one or more persons;
(2) the time of enjoyment is deferred or limited;
(3) the use is restricted.

History: **En. Sec. 1102, Civ. C. 1895; re-en. Sec. 4435, Rev. C. 1907; re-en. Sec. 6677, R.C.M. 1921; Cal. Civ. C. Sec. 680; Field Civ. C. Sec. 173; re-en. Sec. 6677, R.C.M. 1935; R.C.M. 1947, 67-305.**

70-1-305. Ownership by single person. The ownership of property by a single person is designated as a sole or several ownership.

History: **En. Sec. 1103, Civ. C. 1895; re-en. Sec. 4436, Rev. C. 1907; re-en. Sec. 6678, R.C.M. 1921; Cal. Civ. C. Sec. 681; Field Civ. C. Sec. 174; re-en. Sec. 6678, R.C.M. 1935; R.C.M. 1947, 67-306.**

70-1-306. Ownership by several persons — types. The ownership of property by several persons is either of:
(1) joint interests;
(2) partnership interests;
(3) interests in common.

History: **En. Sec. 1104, Civ. C. 1895; re-en. Sec. 4437, Rev. C. 1907; re-en. Sec. 6679, R.C.M. 1921; Cal. Civ. C. Sec. 682; Field Civ. C. Sec. 175; re-en. Sec. 6679, R.C.M. 1935; R.C.M. 1947, 67-307.**

Cross-References

Husband and wife, Title 40, ch. 2.
Husband and wife as joint tenants, 40-2-105.
Joint tenancy — how created, 70-20-105.
Conveyance in joint tenancy — right of survivorship, 70-20-310.
Partition of real property, Title 70, ch. 29.

70-1-307. Joint interest defined. A joint interest is one owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy or when granted or devised to executors or trustees as joint tenants.

History: **En. Sec. 1105, Civ. C. 1895; re-en. Sec. 4438, Rev. C. 1907; re-en. Sec. 6680, R.C.M. 1921; Cal. Civ. C. Sec. 683; Based on Field Civ. C. Sec. 176; re-en. Sec. 6680, R.C.M. 1935; R.C.M. 1947, 67-308.**

Cross-References

Husband and wife as joint tenants, 40-2-105.
Action for waste — treble damages, 70-16-106.
Dower and curtesy abolished, 72-2-122.

70-1-308. Safe deposit box — joint tenancy. When so specified in the agreement granting for a term of time the right in two or more persons to use or occupy any safe or box, commonly referred to as a safe deposit vault or box for the safekeeping of valuables, such interest and estate created in the grantees shall be a joint tenancy in such vault or box and pass to the survivors and survivor upon the death of one or more of the joint tenants with right in such survivors and survivor to have access to and possession of such vault or box and the contents thereof under the terms of the agreement.

History: **En. Sec. 1, Ch. 62, L. 1939; R.C.M. 1947, 67-309.**

Cross-References

Credit unions — joint accounts, 32-3-505.

70-1-309. Repealed. Sec. 134, Ch. 494, L. 1993.

History: **En. 67-308.1 by Sec. 1, Ch. 75, L. 1977; R.C.M. 1947, 67-308.1.**

70-1-310. Action by or against joint tenants or tenants in common. All persons holding as tenants in common, joint tenants, or any number less than all may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of that party. In all cases, one tenant in common or one joint tenant may sue a cotenant.

History: **En. Sec. 21, p. 43, L. 1877; re-en. Sec. 21, 1st Div. Rev. Stat. 1879; re-en. Sec. 21, 1st Div. Comp. Stat. 1887; amd. Sec. 586, C. Civ. Proc. 1895; re-en. Sec. 6493, Rev. C. 1907; re-en. Sec. 9085, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 384; re-en. Sec. 9085, R.C.M. 1935; R.C.M. 1947, 93-2823; amd. Sec. 2054, Ch. 56, L. 2009.**

70-1-311. Repealed. Sec. 315, Ch. 42, L. 1997.

History: **En. Sec. 2, p. 454, Bannack Stat.; re-en. Sec. 2, p. 504, Cod. Stat. 1871; re-en. Sec. 771, 5th Div. Rev. Stat. 1879; re-en. Sec. 1285, 5th Div. Comp. Stat. 1887; amd. Sec. 592, C. Civ. Proc. 1895; en. Sec. 1, p. 134, L. 1899; re-en. Sec. 6499, Rev. C. 1907; re-en. Sec. 9091, R.C.M. 1921; re-en. Sec. 9091, R.C.M. 1935; R.C.M. 1947, 93-2829.**

70-1-312. Partnership interest defined. A partnership interest is one owned by several persons in partnership for partnership purposes.

History: **En. Sec. 1106, Civ. C. 1895; re-en. Sec. 4439, Rev. C. 1907; re-en. Sec. 6681, R.C.M. 1921; Cal. Civ. C. Sec. 684; Field Civ. C. Sec. 177; re-en. Sec. 6681, R.C.M. 1935; R.C.M. 1947, 67-311.**

Cross-References

Partnerships, Title 35, ch. 10 through 12.

70-1-313. Interest in common defined. An interest in common is one owned by several persons, not in joint ownership or partnership.

History: **En. Sec. 1107, Civ. C. 1895; re-en. Sec. 4440, Rev. C. 1907; re-en. Sec. 6682, R.C.M. 1921; Cal. Civ. C. Sec. 685; Field Civ. C. Sec. 178; re-en. Sec. 6682, R.C.M. 1935; R.C.M. 1947, 67-312.**

Cross-References

Action by or against joint tenants or tenants in common, 70-1-310.
Action for waste — treble damages, 70-16-106.
Abuse of property held jointly or in common — action — mining property, 70-19-202.

70-1-314. Interest in common — how created. Every interest created in favor of several persons in their own right, including husband and wife, is an interest in common unless acquired by them in partnership for partnership purposes or unless declared in its creation to be a joint interest, as provided in 70-1-307.

History: En. Sec. 1108, Civ. C. 1895; re-en. Sec. 4441, Rev. C. 1907; re-en. Sec. 6683, R.C.M. 1921; Cal. Civ. C. Sec. 686; Based on Field Civ. C. Sec. 179; re-en. Sec. 6683, R.C.M. 1935; R.C.M. 1947, 67-313.

Cross-References

Husband and wife as joint tenants, 40-2-105.
Husband and wife — when interests separate, 40-2-201.
Dower and curtesy abolished, 72-2-122.

70-1-315. Interest as to time of enjoyment. In respect to the time of enjoyment, an interest in property is either:

(1) present or future; and
(2) perpetual or limited.

History: En. Sec. 1109, Civ. C. 1895; re-en. Sec. 4442, Rev. C. 1907; re-en. Sec. 6684, R.C.M. 1921; Cal. Civ. C. Sec. 688; Field Civ. C. Sec. 180; re-en. Sec. 6684, R.C.M. 1935; R.C.M. 1947, 67-314.

70-1-316. Present interest — to what entitles owner. A present interest entitles the owner to the immediate possession of the property.

History: En. Sec. 1110, Civ. C. 1895; re-en. Sec. 4443, Rev. C. 1907; re-en. Sec. 6685, R.C.M. 1921; Cal. Civ. C. Sec. 689; Field Civ. C. Sec. 181; re-en. Sec. 6685, R.C.M. 1935; R.C.M. 1947, 67-315.

70-1-317. Future interest — to what entitles owner. A future interest entitles the owner to the possession of the property only at a future period.

History: En. Sec. 1111, Civ. C. 1895; re-en. Sec. 4444, Rev. C. 1907; re-en. Sec. 6686, R.C.M. 1921; Cal. Civ. C. Sec. 690; Field Civ. C. Sec. 182; re-en. Sec. 6686, R.C.M. 1935; R.C.M. 1947, 67-316.

Cross-References

Future estate — right of possession at future day, 70-15-209.

70-1-318. What future interests recognized. No future interest in property is recognized by the law, except such as is defined in this code.

History: En. Sec. 1124, Civ. C. 1895; re-en. Sec. 4457, Rev. C. 1907; re-en. Sec. 6699, R.C.M. 1921; Cal. Civ. C. Sec. 703; Field Civ. C. Sec. 195; re-en. Sec. 6699, R.C.M. 1935; R.C.M. 1947, 67-329.

70-1-319. Mere possibility not an interest. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

History: En. Sec. 1121, Civ. C. 1895; re-en. Sec. 4454, Rev. C. 1907; re-en. Sec. 6696, R.C.M. 1921; Cal. Civ. C. Sec. 700; Field Civ. C. Sec. 192; re-en. Sec. 6696, R.C.M. 1935; R.C.M. 1947, 67-326.

70-1-320. Perpetual interest — duration. A perpetual interest has a duration equal to that of the property.

History: En. Sec. 1112, Civ. C. 1895; re-en. Sec. 4445, Rev. C. 1907; re-en. Sec. 6687, R.C.M. 1921; Cal. Civ. C. Sec. 691; Field Civ. C. Sec. 183; re-en. Sec. 6687, R.C.M. 1935; R.C.M. 1947, 67-317.

70-1-321. Limited interest — duration. A limited interest has a duration of less than that of the property.

History: En. Sec. 1113, Civ. C. 1895; re-en. Sec. 4446, Rev. C. 1907; re-en. Sec. 6688, R.C.M. 1921; Cal. Civ. C. Sec. 692; Field Civ. C. Sec. 184; re-en. Sec. 6688, R.C.M. 1935; R.C.M. 1947, 67-318.

70-1-322. Kinds of future interests. A future interest is either:

(1) vested; or
(2) contingent.

History: En. Sec. 1114, Civ. C. 1895; re-en. Sec. 4447, Rev. C. 1907; re-en. Sec. 6689, R.C.M. 1921; Cal. Civ. C. Sec. 693; Field Civ. C. Sec. 185; re-en. Sec. 6689, R.C.M. 1935; R.C.M. 1947, 67-319.

70-1-323. Future interest — when vested. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the intermediate or precedent interest.

History: En. Sec. 1115, Civ. C. 1895; re-en. Sec. 4448, Rev. C. 1907; re-en. Sec. 6690, R.C.M. 1921; Cal. Civ. C. Sec. 694; Field Civ. C. Sec. 186; re-en. Sec. 6690, R.C.M. 1935; R.C.M. 1947, 67-320.

70-1-324. Future interest — when contingent. A future interest is contingent whilst the person in whom or the event upon which it is limited to take effect remains uncertain.

History: En. Sec. 1116, Civ. C. 1895; re-en. Sec. 4449, Rev. C. 1907; re-en. Sec. 6691, R.C.M. 1921; Cal. Civ. C. Sec. 695; Field Civ. C. Sec. 187; re-en. Sec. 6691, R.C.M. 1935; R.C.M. 1947, 67-321.

70-1-325. Two or more alternative future interests. Two or more future interests may be created to take effect in the alternative so that if the first in order fails to vest, the next in succession shall be substituted for it and take effect accordingly.

History: En. Sec. 1117, Civ. C. 1895; re-en. Sec. 4450, Rev. C. 1907; re-en. Sec. 6692, R.C.M. 1921; Cal. Civ. C. Sec. 696; Field Civ. C. Sec. 188; re-en. Sec. 6692, R.C.M. 1935; R.C.M. 1947, 67-322.

70-1-326. Future interests — how passed. Future interests pass by succession, will, and transfer in the same manner as present interests.

History: En. Sec. 1120, Civ. C. 1895; re-en. Sec. 4453, Rev. C. 1907; re-en. Sec. 6695, R.C.M. 1921; Cal. Civ. C. Sec. 699; Field Civ. C. Sec. 191; re-en. Sec. 6695, R.C.M. 1935; R.C.M. 1947, 67-325.

Part 4
Conditions and Limitations of Ownership

Part Cross-References

Trust Code, Title 72, ch. 38.

70-1-401. Fixing time of enjoyment — computation — condition. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on event. In the latter case, the enjoyment is said to be upon condition.

History: En. Sec. 1140, Civ. C. 1895; re-en. Sec. 4458, Rev. C. 1907; re-en. Sec. 6700, R.C.M. 1921; Cal. Civ. C. Sec. 707; Field Civ. C. Sec. 196; re-en. Sec. 6700, R.C.M. 1935; R.C.M. 1947, 67-401.

70-1-402. Kinds of conditions. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

History: En. Sec. 1141, Civ. C. 1895; re-en. Sec. 4459, Rev. C. 1907; re-en. Sec. 6701, R.C.M. 1921; Cal. Civ. C. Sec. 708; Field Civ. C. Sec. 197; re-en. Sec. 6701, R.C.M. 1935; R.C.M. 1947, 67-402.

Cross-References

Types of conditions — defined, 28-1-402 through 28-1-405.

70-1-403. Condition precedent requiring wrongful act. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

History: En. Sec. 1142, Civ. C. 1895; re-en. Sec. 4460, Rev. C. 1907; re-en. Sec. 6702, R.C.M. 1921; Cal. Civ. C. Sec. 709; Field Civ. C. Sec. 198; re-en. Sec. 6702, R.C.M. 1935; R.C.M. 1947, 67-403.

Cross-References

When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

70-1-404. Conditions restraining marriage void. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void, but this does not affect limitations where the intent was not to forbid marriage but only to give the use until marriage.

History: En. Sec. 1143, Civ. C. 1895; re-en. Sec. 4461, Rev. C. 1907; re-en. Sec. 6703, R.C.M. 1921; Cal. Civ. C. Sec. 710; Based on Field Civ. C. Sec. 199; re-en. Sec. 6703, R.C.M. 1935; R.C.M. 1947, 67-404.

Cross-References

Contracts in restraint of marriage generally void, 28-2-706.

70-1-405. Conditions restraining alienation void. Conditions restraining alienation, when repugnant to the interest created, are void.

History: En. Sec. 1144, Civ. C. 1895; re-en. Sec. 4462, Rev. C. 1907; re-en. Sec. 6704, R.C.M. 1921; Cal. Civ. C. Sec. 711; Field Civ. C. Sec. 200; re-en. Sec. 6704, R.C.M. 1935; R.C.M. 1947, 67-405.

70-1-406. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R.C.M. 1921; Cal. Civ. C. Sec. 715; Based on Field Civ. C. Sec. 201; re-en. Sec. 6705, R.C.M. 1935; amd. Sec. 1, Ch. 213, L. 1959; R.C.M. 1947, 67-406(a).

70-1-407. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R.C.M. 1921; Cal. Civ. C. Sec. 716; Field Civ. C. Sec. 202; re-en. Sec. 6706, R.C.M. 1935; amd. Sec. 2, Ch. 213, L. 1959; R.C.M. 1947, 67-407(part).

70-1-408. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R.C.M. 1921; Cal. Civ. C. Sec. 715; Based on Field Civ. C. Sec. 201; re-en. Sec. 6705, R.C.M. 1935; amd. Sec. 1, Ch. 213, L. 1959; R.C.M. 1947, 67-406(b); amd. Sec. 1, Ch. 338, L. 1979.

70-1-409. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R.C.M. 1921; Cal. Civ. C. Sec. 716; Field Civ. C. Sec. 202; re-en. Sec. 6706, R.C.M. 1935; amd. Sec. 2, Ch. 213, L. 1959; R.C.M. 1947, 67-407(part).

70-1-410. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1220, Civ. C. 1895; re-en. Sec. 4491, Rev. C. 1907; re-en. Sec. 6733, R.C.M. 1921; Cal. Civ. C. Sec. 771; Field Civ. C. Sec. 228; re-en. Sec. 6733, R.C.M. 1935; R.C.M. 1947, 67-512.

70-1-411. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Secs. 1, 2, Ch. 214, L. 1959; R.C.M. 1947, 67-423, 67-424.

70-1-412. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1190, Civ. C. 1895; re-en. Sec. 4478, Rev. C. 1907; re-en. Sec. 6720, R.C.M. 1921; Cal. Civ. C. Sec. 748; Field Civ. C. Sec. 215; re-en. Sec. 6720, R.C.M. 1935; R.C.M. 1947, 67-421.

70-1-413. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1160, Civ. C. 1895; re-en. Sec. 4467, Rev. C. 1907; re-en. Sec. 6709, R.C.M. 1921; Cal. Civ. C. Sec. 722; Field Civ. C. Sec. 204; re-en. Sec. 6709, R.C.M. 1935; R.C.M. 1947, 67-410.

70-1-414. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1161, Civ. C. 1895; re-en. Sec. 4468, Rev. C. 1907; re-en. Sec. 6710, R.C.M. 1921; Cal. Civ. C. Sec. 723; Field Civ. C. Sec. 205; re-en. Sec. 6710, R.C.M. 1935; R.C.M. 1947, 67-411.

70-1-415. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1162, Civ. C. 1895; re-en. Sec. 4469, Rev. C. 1907; re-en. Sec. 6711, R.C.M. 1921; Cal. Civ. C. Sec. 724; Field Civ. C. Sec. 206; re-en. Sec. 6711, R.C.M. 1935; amd. Sec. 1, Ch. 212, L. 1939; R.C.M. 1947, 67-412.

70-1-416. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1163, Civ. C. 1895; re-en. Sec. 4470, Rev. C. 1907; re-en. Sec. 6712, R.C.M. 1921; Cal. Civ. C. Sec. 725; Field Civ. C. Sec. 207; re-en. Sec. 6712, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1957; R.C.M. 1947, 67-413.

70-1-417. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1164, Civ. C. 1895; re-en. Sec. 4471, Rev. C. 1907; re-en. Sec. 6713, R.C.M. 1921; Cal. Civ. C. Sec. 726; Field Civ. C. Sec. 208; re-en. Sec. 6713, R.C.M. 1935; amd. Sec. 2, Ch. 212, L. 1939; R.C.M. 1947, 67-414.

70-1-418. Repealed. Sec. 8, Ch. 250, L. 1989.

History: En. Sec. 1171, Civ. C. 1895; re-en. Sec. 4473, Rev. C. 1907; re-en. Sec. 6715, R.C.M. 1921; Cal. Civ. C. Sec. 733; Field Civ. C. Sec. 210; re-en. Sec. 6715, R.C.M. 1935; R.C.M. 1947, 67-416.

70-1-419. Future interest not void for improbable contingency. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

History: En. Sec. 1118, Civ. C. 1895; re-en. Sec. 4451, Rev. C. 1907; re-en. Sec. 6693, R.C.M. 1921; Cal. Civ. C. Sec. 697; Field Civ. C. Sec. 189; re-en. Sec. 6693, R.C.M. 1935; R.C.M. 1947, 67-323.

70-1-420. Future interest limited to class — posthumous children. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

History: En. Sec. 1119, Civ. C. 1895; re-en. Sec. 4452, Rev. C. 1907; re-en. Sec. 6694, R.C.M. 1921; Cal. Civ. C. Sec. 698; Field Civ. C. Sec. 190; re-en. Sec. 6694, R.C.M. 1935; R.C.M. 1947, 67-324.

Cross-References

Omitted children, 72-2-332.

70-1-421. Future interest subject to defeat — how — not void. A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof, nor is the future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

History: En. Sec. 1181, Civ. C. 1895; re-en. Sec. 4475, Rev. C. 1907; re-en. Sec. 6717, R.C.M. 1921; Cal. Civ. C. Sec. 740; Field Civ. C. Sec. 212; re-en. Sec. 6717, R.C.M. 1935; R.C.M. 1947, 67-418.

70-1-422. Future interest contingent on death without children — how defeated. A future interest depending on the contingency of the death of any person without successors, heirs, issue, or children is defeated by the birth of a posthumous child of such person, capable of taking by succession.

History: En. Sec. 45, p. 486, Bannack Stat.; re-en. Sec. 45, p. 403, Cod. Stat. 1871; re-en. Sec. 222, 5th Div. Rev. Stat. 1879; re-en. Sec. 280, 5th Div. Comp. Stat. 1887; amd. Sec. 1180, Civ. C. 1895; re-en. Sec. 4474, Rev. C. 1907; re-en. Sec. 6716, R.C.M. 1921; Cal. Civ. C. Sec. 739; Field Civ. C. Sec. 211; re-en. Sec. 6716, R.C.M. 1935; R.C.M. 1947, 67-417.

70-1-423. Future interest not defeated by destruction of other interest. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest or by destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by 70-1-424 or where a forfeiture is imposed by statute as a penalty for the violation thereof.

History: En. Sec. 1182, Civ. C. 1895; re-en. Sec. 4476, Rev. C. 1907; re-en. Sec. 6718, R.C.M. 1921; Cal. Civ. C. Sec. 741; Field Civ. C. Sec. 213; re-en. Sec. 6718, R.C.M. 1935; R.C.M. 1947, 67-419.

70-1-424. Future contingent interest — termination of precedent interest. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect, but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

History: En. Sec. 1183, Civ. C. 1895; re-en. Sec. 4477, Rev. C. 1907; re-en. Sec. 6719, R.C.M. 1921; Cal. Civ. C. Sec. 742; Field Civ. C. Sec. 214; re-en. Sec. 6719, R.C.M. 1935; R.C.M. 1947, 67-420.

Part 5
Transfer of Property
Grants and Their Interpretation

Part Cross-References

Transfer of real property, Title 70, ch. 20.

Small Tract Financing Act of Montana — trust indentures, Title 71, ch. 1, part 3.

70-1-501. Transfer defined. Transfer is an act of the parties or of the law by which the title to property is conveyed from one living person to another.

History: En. Sec. 1430, Civ. C. 1895; re-en. Sec. 4588, Rev. C. 1907; re-en. Sec. 6835, R.C.M. 1921; Cal. Civ. C. Sec. 1039; Field Civ. C. Sec. 458; re-en. Sec. 6835, R.C.M. 1935; R.C.M. 1947, 67-1501.

70-1-502. Voluntary transfer — applicability of contract rules. A voluntary transfer is an executed contract subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity.

History: En. Sec. 1431, Civ. C. 1895; re-en. Sec. 4589, Rev. C. 1907; re-en. Sec. 6836, R.C.M. 1921; Cal. Civ. C. Sec. 1040; Field Civ. C. Sec. 459; re-en. Sec. 6836, R.C.M. 1935; R.C.M. 1947, 67-1502.

Cross-References

Contracts — obligations in general, Title 28, ch. 1.

70-1-503. What may be transferred. Property of any kind may be transferred, except as otherwise provided by this part.

History: En. Sec. 1440, Civ. C. 1895; re-en. Sec. 4590, Rev. C. 1907; re-en. Sec. 6837, R.C.M. 1921; Cal. Civ. C. Sec. 1044; Field Civ. C. Sec. 460; re-en. Sec. 6837, R.C.M. 1935; R.C.M. 1947, 67-1503.

70-1-504. Possibility not transferable. A mere possibility not coupled with an interest cannot be transferred.

History: En. Sec. 1441, Civ. C. 1895; re-en. Sec. 4591, Rev. C. 1907; re-en. Sec. 6838, R.C.M. 1921; Cal. Civ. C. Sec. 1045; Field Civ. C. Sec. 461; re-en. Sec. 6838, R.C.M. 1935; R.C.M. 1947, 67-1504.

70-1-505. Right of reentry or repossession transferable. A right of reentry or of repossession for breach of condition subsequent can be transferred.

History: En. Sec. 1442, Civ. C. 1895; re-en. Sec. 4592, Rev. C. 1907; re-en. Sec. 6839, R.C.M. 1921; Cal. Civ. C. Sec. 1046; Based on Field Civ. C. Sec. 462; re-en. Sec. 6839, R.C.M. 1935; R.C.M. 1947, 67-1505.

70-1-506. Oral transfer permitted. A transfer may be made without writing in every case in which a writing is not expressly required by statute.

History: En. Sec. 1450, Civ. C. 1895; re-en. Sec. 4594, Rev. C. 1907; re-en. Sec. 6841, R.C.M. 1921; Cal. Civ. C. Sec. 1052; Field Civ. C. Sec. 463; re-en. Sec. 6841, R.C.M. 1935; R.C.M. 1947, 67-1507.

70-1-507. Grant defined. A transfer in writing is called a grant or conveyance or bill of sale. The term "grant", in this part, includes all these instruments unless it is specially applied to real property.

History: En. Sec. 1451, Civ. C. 1895; re-en. Sec. 4595, Rev. C. 1907; re-en. Sec. 6842, R.C.M. 1921; Cal. Civ. C. Sec. 1053; re-en. Sec. 6842, R.C.M. 1935; R.C.M. 1947, 67-1508.

70-1-508. Delivery of grant necessary. A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

History: En. Sec. 1452, Civ. C. 1895; re-en. Sec. 4596, Rev. C. 1907; re-en. Sec. 6843, R.C.M. 1921; Cal. Civ. C. Sec. 1054; Field Civ. C. Sec. 465; re-en. Sec. 6843, R.C.M. 1935; R.C.M. 1947, 67-1509.

70-1-509. Presumption of delivery. A grant duly executed is presumed to have been delivered at its date.

History: En. Sec. 1453, Civ. C. 1895; re-en. Sec. 4597, Rev. C. 1907; re-en. Sec. 6844, R.C.M. 1921; Cal. Civ. C. Sec. 1055; Field Civ. C. Sec. 466; re-en. Sec. 6844, R.C.M. 1935; R.C.M. 1947, 67-1510.

70-1-510. Delivery to grantee necessarily absolute. A grant cannot be delivered to the grantee conditionally. Delivery to the grantee or to the grantee's agent is necessarily absolute, and the instrument takes effect upon delivery, discharged of any condition on which the delivery is made.

History: En. Sec. 1454, Civ. C. 1895; re-en. Sec. 4598, Rev. C. 1907; re-en. Sec. 6845, R.C.M. 1921; Cal. Civ. C. Sec. 1056; Field Civ. C. Sec. 467; re-en. Sec. 6845, R.C.M. 1935; R.C.M. 1947, 67-1511; amd. Sec. 2055, Ch. 56, L. 2009.

70-1-511. Delivery in escrow. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and on delivery by the depositary, it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

History: En. Sec. 1455, Civ. C. 1895; re-en. Sec. 4599, Rev. C. 1907; re-en. Sec. 6846, R.C.M. 1921; Cal. Civ. C. Sec. 1057; Based on Field Civ. C. Sec. 468; re-en. Sec. 6846, R.C.M. 1935; R.C.M. 1947, 67-1512.

70-1-512. Constructive delivery. Though a grant is not actually delivered into the possession of the grantee, it is considered constructively delivered in the following cases:

(1) when the instrument is, by the agreement of the parties at the time of execution, understood to be delivered and under circumstances that the grantee is entitled to immediate delivery; or

(2) when it is delivered to a stranger for the benefit of the grantee and the grantee's assent is shown or may be presumed.

History: En. Sec. 1457, Civ. C. 1895; re-en. Sec. 4601, Rev. C. 1907; re-en. Sec. 6848, R.C.M. 1921; Cal. Civ. C. Sec. 1059; Field Civ. C. Sec. 470; re-en. Sec. 6848, R.C.M. 1935; R.C.M. 1947, 67-1514; amd. Sec. 2056, Ch. 56, L. 2009.

70-1-513. Grants — how interpreted generally. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this part.

History: En. Sec. 1470, Civ. C. 1895; re-en. Sec. 4602, Rev. C. 1907; re-en. Sec. 6849, R.C.M. 1921; Cal. Civ. C. Sec. 1066; Field Civ. C. Sec. 472; re-en. Sec. 6849, R.C.M. 1935; R.C.M. 1947, 67-1515.

Cross-References

Interpretation of contracts, Title 28, ch. 3.

70-1-514. Clear limitation not controlled by other words. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

History: En. Sec. 1471, Civ. C. 1895; re-en. Sec. 4603, Rev. C. 1907; re-en. Sec. 6850, R.C.M. 1921; Cal. Civ. C. Sec. 1067; Field Civ. C. Sec. 473; re-en. Sec. 6850, R.C.M. 1935; R.C.M. 1947, 67-1516.

70-1-515. Recitals — when resorted to. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

History: En. Sec. 1472, Civ. C. 1895; re-en. Sec. 4604, Rev. C. 1907; re-en. Sec. 6851, R.C.M. 1921; Cal. Civ. C. Sec. 1068; Field Civ. C. Sec. 474; re-en. Sec. 6851, R.C.M. 1935; R.C.M. 1947, 67-1517.

Cross-References

What contracts must be in writing, 28-2-903.

When extrinsic evidence concerning written agreement may be considered, 28-2-905.

70-1-516. Interpretation against grantor — exception. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor.

History: En. Sec. 1473, Civ. C. 1895; re-en. Sec. 4605, Rev. C. 1907; re-en. Sec. 6852, R.C.M. 1921; Cal. Civ. C. Sec. 1069; Field Civ. C. Sec. 475; re-en. Sec. 6852, R.C.M. 1935; R.C.M. 1947, 67-1518.

70-1-517. Irreconcilable provisions. If several parts of a grant are absolutely irreconcilable, the former part prevails.

History: En. Sec. 1474, Civ. C. 1895; re-en. Sec. 4606, Rev. C. 1907; re-en. Sec. 6853, R.C.M. 1921; Cal. Civ. C. Sec. 1070; Field Civ. C. Sec. 476; re-en. Sec. 6853, R.C.M. 1935; R.C.M. 1947, 67-1519.

70-1-518. Meaning of heirs and issue in certain remainders. When a future interest is limited by a grant to take effect on the death of any person without heirs or heirs of the person's body or without issue or in equivalent words, the words must be taken to mean successors or issue living at the death of the person named as ancestor.

History: En. Sec. 44, p. 486, Bannack Stat.; re-en. Sec. 44, p. 403, Cod. Stat. 1871; re-en. Sec. 221, 5th Div. Rev. Stat. 1879; re-en. Sec. 279, 5th Div. Comp. Stat. 1887; amd. Sec. 1475, Civ. C. 1895; re-en. Sec. 4607, Rev. C. 1907; re-en. Sec. 6854, R.C.M. 1921; Cal. Civ. C. Sec. 1071; Field Civ. C. Sec. 477; re-en. Sec. 6854, R.C.M. 1935; R.C.M. 1947, 67-1520; amd. Sec. 2057, Ch. 56, L. 2009.

Cross-References

Future interest contingent on death without children — how defeated, 70-1-422.

Share of heirs other than surviving spouse, 72-2-113.

70-1-519. Transfer vests title. A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has unless a different intention is expressed or is necessarily implied.

History: En. Sec. 1490, Civ. C. 1895; re-en. Sec. 4609, Rev. C. 1907; re-en. Sec. 6856, R.C.M. 1921; Cal. Civ. C. Sec. 1083; Based on Field Civ. C. Sec. 479; re-en. Sec. 6856, R.C.M. 1935; R.C.M. 1947, 67-1522.

70-1-520. Transfer of incidents. The transfer of a thing transfers also all its incidents unless expressly excepted, but the transfer of an incident to a thing does not transfer the thing itself.

History: En. Sec. 1491, Civ. C. 1895; re-en. Sec. 4610, Rev. C. 1907; re-en. Sec. 6857, R.C.M. 1921; Cal. Civ. C. Sec. 1084; Field Civ. C. Sec. 481; re-en. Sec. 6857, R.C.M. 1935; R.C.M. 1947, 67-1523.

70-1-521. Grant may inure to benefit of stranger. Except as provided in 70-1-522, a present interest and the benefit of a condition or covenant respecting property may be taken by any natural person under a grant although not named a party to the grant.

History: En. Sec. 1492, Civ. C. 1895; re-en. Sec. 4611, Rev. C. 1907; re-en. Sec. 6858, R.C.M. 1921; Cal. Civ. C. Sec. 1805; Field Civ. C. Sec. 482; re-en. Sec. 6858, R.C.M. 1935; R.C.M. 1947, 67-1524; amd. Sec. 2, Ch. 307, L. 2009.

70-1-522. Certain restrictions on political free speech contrary to public policy — enforcement prohibited — definitions. (1) A person, homeowners' association, property owners' association, corporation, or other private entity may not, as a condition of property ownership within the jurisdiction of the private entity or by other means, prohibit the placement of a sign advocating the election, appointment, or defeat of a candidate for public office or the passage or defeat of a ballot issue on:

(a) property belonging to individual or joint property owners who authorize the placement of the sign; or

(b) common areas in which an owner owns an undivided interest.

(2) A person, homeowners' association, property owners' association, corporation, or other private entity may impose limits on the size of signs allowed to be displayed within the jurisdiction of the private entity and may regulate the location of sign placement and the time period during which signs may be displayed.

(3) An ordinance, covenant, contract term, or other provision, whether agreed to or not between the homeowners' association, property owners' association, corporation, or other private entity and the owner or tenant, is contrary to the public policy of this state. A court may not enforce the terms of an ordinance, covenant, contract term, or other provision that is contrary to public policy under this section.

(4) As used in this section, "ballot issue" and "candidate" have the meanings provided in 13-1-101.

History: En. Sec. 1, Ch. 307, L. 2009.

Part 6
Rentals — Hiring
(Repealed)

70-1-601. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2600, Civ. C. 1895; re-en. Sec. 5215, Rev. C. 1907; re-en. Sec. 7730, R.C.M. 1921; Cal. Civ. C. Sec. 1925; Field Civ. C. Sec. 979; re-en. Sec. 7730, R.C.M. 1935; R.C.M. 1947, 42-101.

70-1-602. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2602, Civ. C. 1895; re-en. Sec. 5217, Rev. C. 1907; re-en. Sec. 7732, R.C.M. 1921; Cal. Civ. C. Sec. 1927; Field Civ. C. Sec. 981; re-en. Sec. 7732, R.C.M. 1935; R.C.M. 1947, 42-103.

70-1-603. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2601, Civ. C. 1895; re-en. Sec. 5216, Rev. C. 1907; re-en. Sec. 7731, R.C.M. 1921; Cal. Civ. C. Sec. 1926; Field Civ. C. Sec. 980; re-en. Sec. 7731, R.C.M. 1935; R.C.M. 1947, 42-102.

70-1-604. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2603, Civ. C. 1895; re-en. Sec. 5218, Rev. C. 1907; re-en. Sec. 7733, R.C.M. 1921; Cal. Civ. C. Sec. 1928; Field Civ. C. Sec. 982; re-en. Sec. 7733, R.C.M. 1935; R.C.M. 1947, 42-104.

70-1-605. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2604, Civ. C. 1895; re-en. Sec. 5219, Rev. C. 1907; re-en. Sec. 7734, R.C.M. 1921; Cal. Civ. C. Sec. 1929; Field Civ. C. Sec. 983; re-en. Sec. 7734, R.C.M. 1935; R.C.M. 1947, 42-105.

70-1-606. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2605, Civ. C. 1895; re-en. Sec. 5220, Rev. C. 1907; re-en. Sec. 7735, R.C.M. 1921; Cal. Civ. C. Sec. 1930; Field Civ. C. Sec. 984; re-en. Sec. 7735, R.C.M. 1935; R.C.M. 1947, 42-106.

70-1-607. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2608, Civ. C. 1895; re-en. Sec. 5223, Rev. C. 1907; re-en. Sec. 7738, R.C.M. 1921; Cal. Civ. C. Sec. 1933; Field Civ. C. Sec. 987; re-en. Sec. 7738, R.C.M. 1935; R.C.M. 1947, 42-109.

70-1-608. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2609, Civ. C. 1895; re-en. Sec. 5224, Rev. C. 1907; re-en. Sec. 7739, R.C.M. 1921; Cal. Civ. C. Sec. 1934; Field Civ. C. Sec. 988; re-en. Sec. 7739, R.C.M. 1935; R.C.M. 1947, 42-110.

70-1-609. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2606, Civ. C. 1895; re-en. Sec. 5221, Rev. C. 1907; re-en. Sec. 7736, R.C.M. 1921; Cal. Civ. C. Sec. 1931; Field Civ. C. Sec. 985; re-en. Sec. 7736, R.C.M. 1935; R.C.M. 1947, 42-107.

70-1-610. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2607, Civ. C. 1895; re-en. Sec. 5222, Rev. C. 1907; re-en. Sec. 7737, R.C.M. 1921; Cal. Civ. C. Sec. 1932; Field Civ. C. Sec. 986; re-en. Sec. 7737, R.C.M. 1935; R.C.M. 1947, 42-108.

70-1-611. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 2610, Civ. C. 1895; re-en. Sec. 5225, Rev. C. 1907; re-en. Sec. 7740, R.C.M. 1921; Cal. Civ. C. Sec. 1935; Field Civ. C. Sec. 989; re-en. Sec. 7740, R.C.M. 1935; R.C.M. 1947, 42-111.

Part 7
Gifts and Devises to Estates

70-1-701. Purpose. It is the purpose of this part to declare that a gift or devise may be made to the estate of a named or otherwise designated person and that a power to appoint to the estate of such a person may be created and exercised in order to ensure that persons who make inter vivos or testamentary conveyances that are subject to the law of Montana can effectively use forms of conveyances that are commonly used in other states to qualify for the federal estate and gift tax marital deductions.
History: En. Sec. 1, Ch. 376, L. 1979.

70-1-702. Estate defined. The word "estate" as used in this part means persons who may take interests in property.
History: En. Sec. 4, Ch. 376, L. 1979.

70-1-703. Conveyances to an estate. Unless a contrary intention appears, a devise, as defined in 72-1-103, or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in that person's will, or may be used to satisfy claims for debts or taxes.

History: En. Sec. 2, Ch. 376, L. 1979; amd. Sec. 2, Ch. 494, L. 1993.

70-1-704. Repealed. Sec. 40, Ch. 293, L. 2015.

History: En. Sec. 3, Ch. 376, L. 1979; amd. Sec. 2058, Ch. 56, L. 2009.

Part 8
Uniform Statutory Rule Against Perpetuities (Renumbered)

70-1-801. Renumbered 72-2-1001. Code Commissioner, 1993.

70-1-802. Renumbered 72-2-1002. Code Commissioner, 1993.

70-1-803. Renumbered 72-2-1003. Code Commissioner, 1993.

70-1-804. Renumbered 72-2-1004. Code Commissioner, 1993.

70-1-805. Renumbered 72-2-1005. Code Commissioner, 1993.

70-1-806. Renumbered 72-2-1006. Code Commissioner, 1993.

70-1-807. Renumbered 72-2-1007. Code Commissioner, 1993.

CHAPTER 2
PERSONAL PROPERTY — SPECIAL KINDS QUIET TITLE AND PARTITION

Part 1 — Special Kinds

70-2-101. Thing in action defined.
70-2-102. Transfer and succession.
70-2-103 through 70-2-110 reserved.
70-2-111. Wild animals.
70-2-112. Repealed.
70-2-113. Repealed.

Part 2 — Quiet Title and Partition

70-2-201. Action for quieting title to personal property.
70-2-202. General procedural provisions applicable.
70-2-203 through 70-2-210 reserved.
70-2-211. Partition of personal property.
70-2-212. Real property partition provisions applicable.

Part 1
Special Kinds

70-2-101. Thing in action defined. A thing in action is a right to recover money or other personal property by a judicial proceeding.

History: En. Sec. 1350, Civ. C. 1895; re-en. Sec. 4557, Rev. C. 1907; re-en. Sec. 6804, R.C.M. 1921; Cal. Civ. C. Sec. 953; Based on Field Civ. C. Sec. 366; re-en. Sec. 6804, R.C.M. 1935; R.C.M. 1947, 67-1102.

Cross-References

Actions and special proceedings defined, 27-1-102.

70-2-102. Transfer and succession. A thing in action arising out of the violation of a right of property or out of an obligation may be transferred by the owner. Upon the death of the owner, it passes to the owner's personal representatives except when in the cases provided in this title it passes to the owner's devisees or successor in office.

History: En. Sec. 1351, Civ. C. 1895; re-en. Sec. 4558, Rev. C. 1907; re-en. Sec. 6805, R.C.M. 1921; Cal. Civ. C. Sec. 954; Field Civ. C. Sec. 367; re-en. Sec. 6805, R.C.M. 1935; R.C.M. 1947, 67-1103; amd. Sec. 2059, Ch. 56, L. 2009.

70-2-103 through 70-2-110 reserved.

70-2-111. Wild animals. Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them or when tamed or taken or held in the possession or disabled and immediately pursued.

History: En. Sec. 1072, Civ. C. 1895; re-en. Sec. 4423, Rev. C. 1907; re-en. Sec. 6665, R.C.M. 1921; Cal. Civ. C. Sec. 656; Field Civ. C. Sec. 161; re-en. Sec. 6665, R.C.M. 1935; R.C.M. 1947, 67-203.

Cross-References

Prohibition of possession of wild animals, 50-23-102.
Fish and wildlife — fishing, hunting, and trapping licenses, Title 87, ch. 2.
Fish and wildlife — restrictions and regulations, Title 87, ch. 3.
Alternative livestock ranches, Title 87, ch. 4, part 4.
Menageries, sanctuaries, and zoos, Title 87, ch. 4, part 8.

70-2-112. Repealed. Sec. 2, Ch. 355, L. 1987.

History: En. Sec. 1, Ch. 97, L. 1933; re-en. Sec. 6665.1, R.C.M. 1935; R.C.M. 1947, 67-204.

70-2-113. Repealed. Sec. 2, Ch. 355, L. 1987.

History: En. Sec. 2, Ch. 97, L. 1933; re-en. Sec. 6665.2, R.C.M. 1935; amd. Sec. 196, Ch. 310, L. 1974; amd. Sec. 2, Ch. 10, L. 1977; R.C.M. 1947, 67-205; amd. Sec. 1, Ch. 277, L. 1983.

Part 2
Quiet Title and Partition

70-2-201. Action for quieting title to personal property. Any person claiming title to personal property, whether in actual possession thereof or not, may bring an action in the district court of any county wherein such personal property or any part thereof is situated against any person or persons claiming any interest therein by reason of alleged ownership, lien, or otherwise and by a decree of such court may have established and determined finally the rights of all claimants to such personal property.

History: En. Sec. 1, Ch. 51, L. 1935; re-en. Sec. 9478.1, R.C.M. 1935; R.C.M. 1947, 93-6201.

70-2-202. General procedural provisions applicable. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4 and 12(a), M.R.Civ.P., are applicable to the action for which provision is made in 70-2-201.

History: En. Sec. 2, Ch. 51, L. 1935; re-en. Sec. 9478.2, R.C.M. 1935; R.C.M. 1947, 93-6202; amd. Sec. 1, Ch. 115, L. 1979.

70-2-203 through 70-2-210 reserved.

70-2-211. Partition of personal property. (1) When any personal property is owned by two or more persons, any one or more thereof may bring an action, according to the respective rights of the persons interested therein, for the partition of such property or for a sale of the same or any part thereof if it appears that a partition cannot be made without great prejudice to the owners.

(2) Such action shall be brought in the county wherein said property or any part thereof is situated.

History: En. Sec. 1, Ch. 143, L. 1959; R.C.M. 1947, 93-6301.1.

70-2-212. Real property partition provisions applicable. The provisions contained in chapter 29 of this title, which prescribe the manner in which real property may be sold, are hereby made applicable to the action which is authorized by 70-2-211.

History: En. Sec. 2, Ch. 143, L. 1959; R.C.M. 1947, 93-6301.2.

CHAPTER 3
TRANSFER OF PERSONAL PROPERTY — GIFTS

Part 1 — General Provisions

70-3-101. Gift defined.
70-3-102. Gift — how made.
70-3-103. Gift not revocable.
70-3-104. Unsolicited goods considered gift.

Part 2 — Gifts in View of Death

70-3-201. Gift in view of death defined.
70-3-202. When gift presumed to be in view of death.

70-3-203. Revocation.
70-3-204. Effect of will upon gift.
70-3-205. When gift treated as legacy.

Part 1
General Provisions

70-3-101. Gift defined. A gift is a transfer of personal property made voluntarily and without consideration.

History: **En. Sec. 1550, Civ. C. 1895; re-en. Sec. 4635, Rev. C. 1907; re-en. Sec. 6882, R.C.M. 1921; Cal. Civ. C. Sec. 1146; Field Civ. C. Sec. 500; re-en. Sec. 6882, R.C.M. 1935; R.C.M. 1947, 67-1706.**

Cross-References

Montana Uniform Transfers to Minors Act, Title 72, ch. 26.

70-3-102. Gift — how made. A verbal gift is not valid unless the means of obtaining possession and control of the thing are given or, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

History: **En. Sec. 1551, Civ. C. 1895; re-en. Sec. 4636, Rev. C. 1907; re-en. Sec. 6883, R.C.M. 1921; Cal. Civ. C. Sec. 1147; Field Civ. C. Sec. 501; re-en. Sec. 6883, R.C.M. 1935; R.C.M. 1947, 67-1707.**

70-3-103. Gift not revocable. A gift, other than a gift in view of death, cannot be revoked by the giver.

History: **En. Sec. 1552, Civ. C. 1895; re-en. Sec. 4637, Rev. C. 1907; re-en. Sec. 6884, R.C.M. 1921; Cal. Civ. C. Sec. 1148; Field Civ. C. Sec. 502; re-en. Sec. 6884, R.C.M. 1935; R.C.M. 1947, 67-1708.**

70-3-104. Unsolicited goods considered gift. Unless otherwise agreed, when unsolicited goods are delivered to a person, the person may refuse delivery of the goods, or if the goods are delivered, the person is not bound to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they must be considered a gift, and the recipient may use or dispose of them in any manner without obligation to the sender.

History: **En. Sec. 1, Ch. 210, L. 1967; R.C.M. 1947, 67-1706.1; amd. Sec. 2060, Ch. 56, L. 2009.**

Part 2
Gifts in View of Death

70-3-201. Gift in view of death defined. A gift in view of death is one which is made in contemplation, fear, or peril of death and with intent that it shall take effect only in case of the death of the giver.

History: **En. Sec. 1553, Civ. C. 1895; re-en. Sec. 4638, Rev. C. 1907; re-en. Sec. 6885, R.C.M. 1921; Cal. Civ. C. Sec. 1149; Field Civ. C. Sec. 503; re-en. Sec. 6885, R.C.M. 1935; R.C.M. 1947, 67-1709.**

70-3-202. When gift presumed to be in view of death. A gift made during the last illness of the giver or under circumstances that would impress the giver with an expectation of speedy death is presumed to be a gift in view of death.

History: **En. Sec. 1554, Civ. C. 1895; re-en. Sec. 4639, Rev. C. 1907; re-en. Sec. 6886, R.C.M. 1921; Cal. Civ. C. Sec. 1150; Field Civ. C. Sec. 504; re-en. Sec. 6886, R.C.M. 1935; R.C.M. 1947, 67-1710; amd. Sec. 2061, Ch. 56, L. 2009.**

70-3-203. Revocation. A gift in view of death may be revoked by the giver at any time and is revoked by the giver's recovery from the illness or escape from the peril under the presence of which it was made or by the occurrence of any event that would operate as a revocation of a will made at the same time.

History: **En. Sec. 1555, Civ. C. 1895; re-en. Sec. 4640, Rev. C. 1907; re-en. Sec. 6887, R.C.M. 1921; Cal. Civ. C. Sec. 1151; Field Civ. C. Sec. 505; re-en. Sec. 6887, R.C.M. 1935; R.C.M. 1947, 67-1711; amd. Sec. 2062, Ch. 56, L. 2009.**

70-3-204. Effect of will upon gift. A gift in view of death is not affected by a previous will or by a subsequent will unless it expresses intention to revoke the gift.

History: **En. Sec. 1556, Civ. C. 1895; re-en. Sec. 4641, Rev. C. 1907; re-en. Sec. 6888, R.C.M. 1921; Cal. Civ. C. Sec. 1152; Field Civ. C. Sec. 506; re-en. Sec. 6888, R.C.M. 1935; R.C.M. 1947, 67-1712.**

Cross-References

Wills, will contracts, and custody and deposit of wills, Title 72, ch. 2, part 5.
Wills — rules of construction, Title 72, ch. 2, part 6.

70-3-205. When gift treated as legacy. A gift in view of death must be treated as a legacy so far as relates to the creditors of the giver.

History: En. Sec. 1557, Civ. C. 1895; re-en. Sec. 4642, Rev. C. 1907; re-en. Sec. 6889, R.C.M. 1921; Cal. Civ. C. Sec. 1153; Field Civ. C. Sec. 507; re-en. Sec. 6889, R.C.M. 1935; R.C.M. 1947, 67-1713.

CHAPTER 4
ACCESSION AND INTERMIXTURE PERSONAL PROPERTY

Part 1 — General Provisions

70-4-101. Uniform Commercial Code — applicability.
70-4-102. Uniting several things — to whom whole belongs.
70-4-103. Rules for determination of principal part.

Part 2 — Uniting of Materials — Workmanship

70-4-201. Use of materials belonging to another — reimbursement.
70-4-202. Uniting of materials of maker and other.
70-4-203. Uniting of materials of several owners.
70-4-204. Use of materials without consent — owner prevails.
70-4-205. Owner of materials wrongfully used — election of remedies.
70-4-206. Wrongdoer liable in damages.

Part 1
General Provisions

70-4-101. Uniform Commercial Code — applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 67-1410 by Sec. 11-147, Ch. 264, L. 1963; R.C.M. 1947, 67-1410.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9A.

70-4-102. Uniting several things — to whom whole belongs. When things belonging to different owners have been united so as to form a single thing and cannot be separated without injury, the whole belongs to the owner of the thing that forms the principal part. However, that person shall reimburse the value of the residue to the other owner or surrender the whole to the other owner.

History: En. Sec. 1410, Civ. C. 1895; re-en. Sec. 4579, Rev. C. 1907; re-en. Sec. 6826, R.C.M. 1921; Cal. Civ. C. Sec. 1025; Field Civ. C. Sec. 449; re-en. Sec. 6826, R.C.M. 1935; R.C.M. 1947, 67-1401; amd. Sec. 2063, Ch. 56, L. 2009.

70-4-103. Rules for determination of principal part. (1) That part is considered to be the principal to which the other has been united only for the use, ornament, or completion of the principal part unless the other is the more valuable and has been united without the knowledge of its owner, who may, in that case, require it to be separated and returned to the owner although some injury results to the thing to which it has been united.

(2) If neither part can be considered the principal within the rule prescribed by subsection (1), the more valuable or, if the values are nearly equal, the most considerable in bulk is to be considered the principal part.

History: En. Secs. 1411, 1412, Civ. C. 1895; re-en. Secs. 4580, 4581, Rev. C. 1907; re-en. Secs. 6827, 6828, R.C.M. 1921; Cal. Civ. C. Secs. 1026, 1027; Field Civ. C. Secs. 450, 451; re-en. Secs. 6827, 6828, R.C.M. 1935; R.C.M. 1947, 67-1402, 67-1403; amd. Sec. 2064, Ch. 56, L. 2009.

Part 2
Uniting of Materials — Workmanship

70-4-201. Use of materials belonging to another — reimbursement. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker on reimbursing the value of the materials.

History: **En. Sec. 1413, Civ. C. 1895; re-en. Sec. 4582, Rev. C. 1907; re-en. Sec. 6829, R.C.M. 1921; Cal. Civ. C. Sec. 1028; Field Civ. C. Sec. 452; re-en. Sec. 6829, R.C.M. 1935; R.C.M. 1947, 67-1404.**

70-4-202. Uniting of materials of maker and other. When a person has made use of materials that in part belong to the person and in part to another in order to form a thing of a new description without having destroyed any of the materials but in a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to the person and, as respects the other, of the materials belonging to the other and the price of the other's workmanship.

History: **En. Sec. 1414, Civ. C. 1895; re-en. Sec. 4583, Rev. C. 1907; re-en. Sec. 6830, R.C.M. 1921; Cal. Civ. C. Sec. 1029; Field Civ. C. Sec. 453; re-en. Sec. 6830, R.C.M. 1935; R.C.M. 1947, 67-1405; amd. Sec. 2065, Ch. 56, L. 2009.**

70-4-203. Uniting of materials of several owners. When a thing has been formed by the combination of several materials of different owners and none of the materials can be considered the principal substance, an owner without whose consent the combination was made may require a separation if the materials can be separated without inconvenience. If they cannot be separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials, but if the materials of one were far superior to those of the others, both in quantity and value, the person may claim the thing on reimbursing to the others the value of their materials.

History: **En. Sec. 1415, Civ. C. 1895; re-en. Sec. 4584, Rev. C. 1907; re-en. Sec. 6831, R.C.M. 1921; Cal. Civ. C. Sec. 1030; Field Civ. C. Sec. 454; re-en. Sec. 6831, R.C.M. 1935; R.C.M. 1947, 67-1406; amd. Sec. 2066, Ch. 56, L. 2009.**

70-4-204. Use of materials without consent — owner prevails. Title 70, chapter 4, part 1, and 70-4-201 through 70-4-203 are not applicable to cases in which one willfully uses the materials of another without the other's consent, but in those cases, the product belongs to the owner of material if its identity can be traced.

History: **En. Sec. 1416, Civ. C. 1895; re-en. Sec. 4585, Rev. C. 1907; re-en. Sec. 6832, R.C.M. 1921; Cal. Civ. C. Sec. 1031; Field Civ. C. Sec. 455; re-en. Sec. 6832, R.C.M. 1935; R.C.M. 1947, 67-1407; amd. Sec. 2067, Ch. 56, L. 2009.**

70-4-205. Owner of materials wrongfully used — election of remedies. If a person whose material has been used without the person's knowledge in order to form a product of a different description can claim an interest in the product, the person has an option to demand either restitution of the person's material in kind, in the same quantity, weight, measure, and quality, or the value of the material or, if the person is entitled to the product, the value of the product in place of the product.

History: **En. Sec. 1417, Civ. C. 1895; re-en. Sec. 4586, Rev. C. 1907; re-en. Sec. 6833, R.C.M. 1921; Cal. Civ. C. Sec. 1032; Field Civ. C. Sec. 456; re-en. Sec. 6833, R.C.M. 1935; R.C.M. 1947, 67-1408; amd. Sec. 2068, Ch. 56, L. 2009.**

70-4-206. Wrongdoer liable in damages. One who wrongfully employs materials belonging to another is liable to the other in damages as well as under the provisions of Title 70, chapter 4, part 1, and 70-4-201 through 70-4-205.

History: **En. Sec. 1418, Civ. C. 1895; re-en. Sec. 4587, Rev. C. 1907; re-en. Sec. 6834, R.C.M. 1921; Cal. Civ. C. Sec. 1033; Field Civ. C. Sec. 457; re-en. Sec. 6834, R.C.M. 1935; R.C.M. 1947, 67-1409; amd. Sec. 2069, Ch. 56, L. 2009.**

Cross-References

Damages, Title 27, ch. 1, parts 2 and 3.

CHAPTER 5
FINDERS

Part 1 — Rights and Duties of Finders Generally

70-5-101. Nonapplicability to things abandoned.
70-5-102. Finder not bound to take charge — status as depositary.
70-5-103. Duty to inform owner when known.
70-5-104. Right of finder to require proof of claimant's ownership.
70-5-105. Compensation of finder.
70-5-106. Exoneration of finder by storage of thing found.
70-5-107. Exoneration of owner by surrender of thing to finder.

Part 2 — Procedure

70-5-201. When finder may sell thing found.
70-5-202. How sale conducted.
70-5-203. Repealed.
70-5-204. Repealed.
70-5-205. Repealed.
70-5-206. Repealed.
70-5-207. Repealed.
70-5-208. Repealed.
70-5-209. Repealed.

Chapter Cross-References

Performance to one of several joint creditors, 28-1-1103.

Part 1
Rights and Duties of Finders Generally

70-5-101. Nonapplicability to things abandoned. The provisions of this chapter have no application to things which have been intentionally abandoned by their owners.

History: En. Sec. 2528, Civ. C. 1895; re-en. Sec. 5186, Rev. C. 1907; re-en. Sec. 7693, R.C.M. 1921; Cal. Civ. C. Sec. 1872; Field Civ. C. Sec. 946; re-en. Sec. 7693, R.C.M. 1935; R.C.M. 1947, 20-409.

70-5-102. Finder not bound to take charge — status as depositary. A person who finds a thing lost is not bound to take charge of it, but if the person does, the person is a depositary for the owner, with the rights and obligations of a depositary for hire.

History: En. Sec. 2520, Civ. C. 1895; re-en. Sec. 5178, Rev. C. 1907; re-en. Sec. 7685, R.C.M. 1921; Cal. Civ. C. Sec. 1864; Field Civ. C. Sec. 938; re-en. Sec. 7685, R.C.M. 1935; R.C.M. 1947, 20-401; amd. Sec. 2070, Ch. 56, L. 2009.

Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.
Bailment — deposit, Title 70, ch. 6.

70-5-103. Duty to inform owner when known. If a person finds money, goods, things in action, or other personal property or saves a domestic animal from drowning or starvation when the property is of a value of $10 or more and the person knows or suspects who the owner is, the person shall use reasonable diligence to inform the owner and make restitution without compensation, further than a reasonable charge for saving and taking care of the property. If the person fails to do so, the person is liable in damages to the owner and does not have a claim to any reward offered by the owner for the recovery of the thing or to any compensation for the person's trouble or expenses.

History: En. Sec. 2900, Pol. C. 1895; re-en. Sec. 1996, Rev. C. 1907; re-en. Sec. 7694, R.C.M. 1921; Cal. Pol. C. Sec. 3136; re-en. Sec. 7694, R.C.M. 1935; R.C.M. 1947, 20-410(part); amd. Sec. 2, Ch. 115, L. 1979; amd. Sec. 2071, Ch. 56, L. 2009.

70-5-104. Right of finder to require proof of claimant's ownership. The finder of a thing may in good faith before giving it up require reasonable proof of ownership from any person claiming it.

History: En. Sec. 2522, Civ. C. 1895; re-en. Sec. 5180, Rev. C. 1907; re-en. Sec. 7687, R.C.M. 1921; Cal. Civ. C. Sec. 1866; Field Civ. C. Sec. 940; re-en. Sec. 7687, R.C.M. 1935; R.C.M. 1947, 20-403.

70-5-105. Compensation of finder. The finder of a thing is entitled to compensation for all expenses necessarily incurred by the finder in its preservation and for any other service necessarily performed by the finder about it and to a reasonable reward for keeping it.

History: En. Sec. 2523, Civ. C. 1895; re-en. Sec. 5181, Rev. C. 1907; re-en. Sec. 7688, R.C.M. 1921; Cal. Civ. Sec. 1867; Field. Civ. C. Sec. 941; re-en. Sec. 7688, R.C.M. 1935; R.C.M. 1947, 20-404; amd. Sec. 2072, Ch. 56, L. 2009.

70-5-106. Exoneration of finder by storage of thing found. The finder of a thing may be exonerated from liability at any time by placing it in storage with any responsible person of good character at a reasonable expense.

History: En. Sec. 2524, Civ. C. 1895; re-en. Sec. 5182, Rev. C. 1907; re-en. Sec. 7689, R.C.M. 1921; Cal. Civ. C. Sec. 1868; Field Civ. C. Sec. 942; re-en. Sec. 7689, R.C.M. 1935; R.C.M. 1947, 20-405; amd. Sec. 2073, Ch. 56, L. 2009.

70-5-107. Exoneration of owner by surrender of thing to finder. The owner of a thing found may be exonerated from the claims of the finder by surrendering it to the finder in satisfaction of the claims.

History: En. Sec. 2527, Civ. C. 1895; re-en. Sec. 5185, Rev. C. 1907; re-en. Sec. 7692, R.C.M. 1921; Cal. Civ. C. Sec. 1868; Field. Civ. C. Sec. 945; re-en. Sec. 7692, R.C.M. 1935; R.C.M. 1947, 20-408; amd. Sec. 2074, Ch. 56, L. 2009.

Part 2
Procedure

70-5-201. When finder may sell thing found. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found or being found refuses upon demand to pay the lawful charges of the finder, in the following cases:

(1) when the thing is in danger of perishing or of losing the greater part of its value; or

(2) when the lawful charges of the finder amount to two-thirds of its value.

History: En. Sec. 2525, Civ. C. 1895; re-en. Sec. 5183, Rev. C. 1907; re-en. Sec. 7690, R.C.M. 1921; Cal. Civ. C. Sec. 1869; Field Civ. C. Sec. 943; re-en. Sec. 7690, R.C.M. 1935; R.C.M. 1947, 20-406.

70-5-202. How sale conducted. A sale under the provisions of 70-5-201 must be made in the same manner as the sale of a thing pledged.

History: En. Sec. 2526, Civ. C. 1895; re-en. Sec. 5184, Rev. C. 1907; re-en. Sec. 7691, R.C.M. 1921; Cal. Civ. C. Sec. 1870; Field Civ. C. Sec. 944; re-en. Sec. 7691, R.C.M. 1935; R.C.M. 1947, 20-407.

70-5-203. Repealed. Sec. 1, Ch. 252, L. 1993.

History: En. Sec. 2900, Pol. C. 1895; re-en. Sec. 1996, Rev. C. 1907; re-en. Sec. 7694, R.C.M. 1921; Cal. Pol. C. Sec. 3136; re-en. Sec. 7694, R.C.M. 1935; R.C.M. 1947, 20-410(part).

70-5-204. Repealed. Sec. 1, Ch. 252, L. 1993.

History: En. Sec. 2901, Pol. C. 1895; re-en. Sec. 1997, Rev. C. 1907; re-en. Sec. 7695, R.C.M. 1921; Cal. Pol. C. Sec. 3137; re-en. Sec. 7695, R.C.M. 1935; R.C.M. 1947, 20-411.

70-5-205. Repealed. Sec. 1, Ch. 252, L. 1993.

History: En. Sec. 2902, Pol. C. 1895; re-en. Sec. 1998, Rev. C. 1907; re-en. Sec. 7696, R.C.M. 1921; Cal. Pol. C. Sec. 3138; re-en. Sec. 7696, R.C.M. 1935; R.C.M. 1947, 20-412.

70-5-206. Repealed. Sec. 1, Ch. 252, L. 1993.

History: En. Sec. 2903, Pol. C. 1895; re-en. Sec. 1999, Rev. C. 1907; re-en. Sec. 7697, R.C.M. 1921; Cal. Pol. C. Sec. 3139; re-en. Sec. 7697, R.C.M. 1935; R.C.M. 1947, 20-413.

70-5-207. Repealed. Sec. 1, Ch. 252, L. 1993.

History: En. Sec. 2904, Pol. C. 1895; re-en. Sec. 2000, Rev. C. 1907; re-en. Sec. 7698, R.C.M. 1921; Cal. Pol. C. Sec. 3140; re-en. Sec. 7698, R.C.M. 1935; R.C.M. 1947, 20-414.

70-5-208. Repealed. Sec. 1, Ch. 252, L. 1993.

History: En. Sec. 2906, Pol. C. 1895; re-en. Sec. 2002, Rev. C. 1907; re-en. Sec. 7700, R.C.M. 1921; Cal. Pol. C. Sec. 3142; re-en. Sec. 7700, R.C.M. 1935; R.C.M. 1947, 20-416.

70-5-209. Repealed. Sec. 1, Ch. 252, L. 1993.

History: En. Sec. 2905, Pol. C. 1895; re-en. Sec. 2001, Rev. C. 1907; re-en. Sec. 7699, R.C.M. 1921; Cal. Pol. C. Sec. 3141; re-en. Sec. 7699, R.C.M. 1935; R.C.M. 1947, 20-415.

CHAPTER 6
BAILMENT — DEPOSIT

Part 1 — Nature and Classification of Deposits

70-6-101. Deposit — voluntary or involuntary.
70-6-102. Voluntary deposit — how made.
70-6-103. Involuntary deposit — how made.
70-6-104. Involuntary depositary bound to take charge.
70-6-105. Involuntary deposit as gratuitous.
70-6-106. Deposit for keeping defined.
70-6-107. Deposit for exchange defined.
70-6-108. Deposit for exchange — title passes.

Part 2 — Rights and Duties of the Parties Generally

70-6-201. Depositary not to use or open thing deposited.
70-6-202. Liability for damage from wrongful use.
70-6-203. Loss or injury of thing deposited.
70-6-204. Extent of depositary's liability for negligence.
70-6-205. Sale of thing in danger of perishing.
70-6-206. Duty of depositary of animals.
70-6-207. Service rendered by depositary.
70-6-208. Notice to owner of adverse claim.
70-6-209. Notice to true owner of thing wrongfully detained.
70-6-210. Depositor to indemnify depositary — damage — expenses.
70-6-211. Depositary to deliver on demand.
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70-6-213. Place of delivery.
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70-6-302. Degree of care required of gratuitous depositary.
70-6-303. When duties of gratuitous depositary cease.

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70-6-502. No liability without negligence.
70-6-503. Loss or damage by fire — liability for negligence.
70-6-504. How exempted from liability — safe.
70-6-505. Storage of property in outbuilding — nonliability.
70-6-506 through 70-6-510 reserved.
70-6-511. Eviction of guests.
70-6-512. Innkeeper's responsibilities — limits.
70-6-513. Consumption or possession of alcohol — civil liability — licensure protection.
70-6-514. Liability of parent or guardian for minor's damage to public accommodation.

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70-6-603. Self-storage use — prohibition on residential or other unlawful purposes.
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70-6-605. Renter's personal property — operator's lien — rental agreement — value of contents.
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70-6-607. Renter default — personal property sale.
70-6-608. Renter's rights.
70-6-609. Rights of parties — rental agreements — compliance with Servicemembers Civil Relief Act.

Chapter Cross-References

Performance to one of several joint creditors, 28-1-1103.

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Part 1
Nature and Classification of Deposits

70-6-101. Deposit — voluntary or involuntary. A deposit may be:

(1) voluntary or involuntary; and

(2) for safekeeping or for exchange.

History: En. Sec. 2440, Civ. C. 1895; re-en. Sec. 5133, Rev. C. 1907; re-en. Sec. 7636, R.C.M. 1921; Cal. Civ. C. Sec. 1813; Field Civ. C. Sec. 907; re-en. Sec. 7636, R.C.M. 1935; R.C.M. 1947, 20-101.

Cross-References

When seller must act as depositary, 30-11-201.

70-6-102. Voluntary deposit — how made. A voluntary deposit is made by one giving to another, with the other's consent, the possession of personal property to keep for the benefit of the former or of a third party. The person giving is called the depositor and the person receiving the depositary.

History: En. Sec. 2441, Civ. C. 1895; re-en. Sec. 5134, Rev. C. 1907; re-en. Sec. 7637, R.C.M. 1921; Cal. Civ. C. Sec. 1814; Field Civ. C. Sec. 908; re-en. Sec. 7637, R.C.M. 1935; R.C.M. 1947, 20-102; amd. Sec. 2075, Ch. 56, L. 2009.

70-6-103. Involuntary deposit — how made. An involuntary deposit is made:

(1) by the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of the owner; or

(2) in cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it out of necessity to the care of any person.

History: En. Sec. 2442, Civ. C. 1895; re-en. Sec. 5135, Rev. C. 1907; re-en. Sec. 7638, R.C.M. 1921; Cal. Civ. C. Sec. 1815; Field Civ. C. Sec. 909; re-en. Sec. 7638, R.C.M. 1935; R.C.M. 1947, 20-103.

70-6-104. Involuntary depositary bound to take charge. The person with whom a thing is deposited in the manner described in 70-6-103 is bound to take charge of it if able to do so.

History: En. Sec. 2443, Civ. C. 1895; re-en. Sec. 5136, Rev. C. 1907; re-en. Sec. 7639, R.C.M. 1921; Cal. Civ. C. Sec. 1816; Field Civ. C. Sec. 910; re-en. Sec. 7639, R.C.M. 1935; R.C.M. 1947, 20-104.

70-6-105. Involuntary deposit as gratuitous. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

History: En. Sec. 2481, Civ. C. 1895; re-en. Sec. 5154, Rev. C. 1907; re-en. Sec. 7657, R.C.M. 1921; Cal. Civ. C. Sec. 1845; Field Civ. C. Sec. 928; re-en. Sec. 7657, R.C.M. 1935; R.C.M. 1947, 20-210.

70-6-106. Deposit for keeping defined. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

History: En. Sec. 2444, Civ. C. 1895; re-en. Sec. 5137, Rev. C. 1907; re-en. Sec. 7640, R.C.M. 1921; Cal. Civ. C. Sec. 1817; Field Civ. C. Sec. 911; re-en. Sec. 7640, R.C.M. 1935; R.C.M. 1947, 20-105.

70-6-107. Deposit for exchange defined. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

History: En. Sec. 2445, Civ. C. 1895; re-en. Sec. 5138, Rev. C. 1907; re-en. Sec. 7641, R.C.M. 1921; Cal. Civ. C. Sec. 1818; Field Civ. C. Sec. 912; re-en. Sec. 7641, R.C.M. 1935; R.C.M. 1947, 20-106.

70-6-108. Deposit for exchange — title passes. A deposit for exchange transfers to the depositary the title to the thing deposited and creates between the depositary and the depositor the relation of debtor and creditor.

History: En. Sec. 2540, Civ. C. 1895; re-en. Sec. 5187, Rev. C. 1907; re-en. Sec. 7701, R.C.M. 1921; Cal. Civ. C. Sec. 1878; Field Civ. C. Sec. 947; re-en. Sec. 7701, R.C.M. 1935; R.C.M. 1947, 20-501; amd. Sec. 2076, Ch. 56, L. 2009.

Part 2
Rights and Duties of the Parties Generally

70-6-201. Depositary not to use or open thing deposited. A depositary may not use the thing deposited or permit it to be used for any purpose without the consent of the depositor. A depositary may not, if it is purposely fastened by the depositor, open it without the consent of the depositor, except in case of necessity.

History: En. Sec. 2462, Civ. C. 1895; re-en. Sec. 5147, Rev. C. 1907; re-en. Sec. 7650, R.C.M. 1921; Cal. Civ. C. Sec. 1835; Field Civ. C. Sec. 921; re-en. Sec. 7650, R.C.M. 1935; R.C.M. 1947, 20-203; amd. Sec. 2077, Ch. 56, L. 2009.

70-6-202. Liability for damage from wrongful use. A depositary is liable for any damage happening to the thing deposited during the depositary's wrongful use of the thing unless the damage inevitably would have happened if the property had not been used.

History: En. Sec. 2463, Civ. C. 1895; re-en. Sec. 5148, Rev. C. 1907; re-en. Sec. 7651, R.C.M. 1921; Cal. Civ. C. Sec. 1836; Field Civ. C. Sec. 922; re-en. Sec. 7651, R.C.M. 1935; R.C.M. 1947, 20-204; amd. Sec. 2078, Ch. 56, L. 2009.

70-6-203. Loss or injury of thing deposited. If a thing is lost during its deposit and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred so far as the depositary has information concerning them or willfully misrepresents the circumstances to the depositor, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

History: En. Sec. 2465, Civ. C. 1895; re-en. Sec. 5150, Rev. C. 1907; re-en. Sec. 7653, R.C.M. 1921; Cal. Civ. C. Sec. 1838; Based on Field Civ. C. Sec. 924; re-en. Sec. 7653, R.C.M. 1935; R.C.M. 1947, 20-206; amd. Sec. 2079, Ch. 56, L. 2009.

Cross-References

Liability, Title 27, ch. 1, part 7.

70-6-204. Extent of depositary's liability for negligence. The liability of a depositary for negligence cannot exceed the amount that the depositary is informed by the depositor or has reason to suppose the thing deposited to be worth.

History: En. Sec. 2467, Civ. C. 1895; re-en. Sec. 5152, Rev. C. 1907; re-en. Sec. 7655, R.C.M. 1921; Cal. Civ. C. Sec. 1840; Based on Field Civ. C. Sec. 926; re-en. Sec. 7655, R.C.M. 1935; R.C.M. 1947, 20-208; amd. Sec. 2080, Ch. 56, L. 2009.

Cross-References

Liability, Title 27, ch. 1, part 7.

70-6-205. Sale of thing in danger of perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of the proceedings to the depositor.

History: En. Sec. 2464, Civ. C. 1895; re-en. Sec. 5149, Rev. C. 1907; re-en. Sec. 7652, R.C.M. 1921; Cal. Civ. C. Sec. 1837; Field Civ. C. Sec. 923; re-en. Sec. 7652, R.C.M. 1935; R.C.M. 1947, 20-205; amd. Sec. 2081, Ch. 56, L. 2009.

70-6-206. Duty of depositary of animals. A depositary of living animals must provide them with suitable food and shelter and treat them kindly.

History: En. Sec. 2461, Civ. C. 1895; re-en. Sec. 5146, Rev. C. 1907; re-en. Sec. 7649, R.C.M. 1921; Cal. Civ. C. Sec. 1834; Field Civ. C. Sec. 920; re-en. Sec. 7649, R.C.M. 1935; R.C.M. 1947, 20-202.

Cross-References

Cruelty to animals — exception, 45-8-211.

70-6-207. Service rendered by depositary. So far as any service is rendered by a depositary or required from a depositary, the depositary's duties and liabilities are prescribed by the law on employment and service.

History: En. Sec. 2466, Civ. C. 1895; re-en. Sec. 5151, Rev. C. 1907; re-en. Sec. 7654, R.C.M. 1921; Cal. Civ. C. Sec. 1839; Field Civ. C. Sec. 925; re-en. Sec. 7654, R.C.M. 1935; R.C.M. 1947, 20-207; amd. Sec. 2082, Ch. 56, L. 2009.

70-6-208. Notice to owner of adverse claim. A depositary shall give prompt notice to the person for whose benefit the deposit was made of any proceedings taken adversely to the person's interest in the thing deposited that may tend to excuse the depositary from delivering the thing to the person.

History: En. Sec. 2453, Civ. C. 1895; re-en. Sec. 5142, Rev. C. 1907; re-en. Sec. 7645, R.C.M. 1921; Cal. Civ. C. Sec. 1825; Field Civ. C. Sec. 916; re-en. Sec. 7645, R.C.M. 1935; R.C.M. 1947, 20-110; amd. Sec. 2083, Ch. 56, L. 2009.

70-6-209. Notice to true owner of thing wrongfully detained. A depositary who believes that a thing deposited with the depositary is wrongfully detained from its true owner may give the owner notice of the deposit, and if within a reasonable time afterwards the owner does not claim it and sufficiently establish a right to the thing and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom the depositary gave the notice upon returning the thing to the depositor or assuming, in good faith, a new obligation changing the depositary's position in respect to the thing to the depositary's prejudice.

History: En. Sec. 2454, Civ. C. 1895; re-en. Sec. 5143, Rev. C. 1907; re-en. Sec. 7646, R.C.M. 1921; Cal. Civ. C. Sec. 1826; Field Civ. C. Sec. 917; re-en. Sec. 7646, R.C.M. 1935; R.C.M. 1947, 20-111; amd. Sec. 2084, Ch. 56, L. 2009.

70-6-210. Depositor to indemnify depositary — damage — expenses. A depositor shall indemnify the depositary for:

(1) all damage caused to the depositary by the defects or vices of the thing deposited; and

(2) all expenses necessarily incurred by the depositary about the thing, other than expenses involved in the nature of the undertaking.

History: En. Sec. 2460, Civ. C. 1895; re-en. Sec. 5145, Rev. C. 1907; re-en. Sec. 7648, R.C.M. 1921; Cal. Civ. C. Sec. 1833; Field Civ. C. Sec. 919; re-en. Sec. 7648, R.C.M. 1935; R.C.M. 1947, 20-201; amd. Sec. 2085, Ch. 56, L. 2009.

70-6-211. Depositary to deliver on demand. A depositary shall deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless the depositary has a lien upon the thing deposited or has been forbidden or prevented from doing so by the real owner of the thing or by the act of the law and has given the notice required by 70-6-208.

History: En. Sec. 2450, Civ. C. 1895; re-en. Sec. 5139, Rev. C. 1907; re-en. Sec. 7642, R.C.M. 1921; Cal. Civ. C. Sec. 1822; Field Civ. C. Sec. 913; re-en. Sec. 7642, R.C.M. 1935; R.C.M. 1947, 20-107; amd. Sec. 2086, Ch. 56, L. 2009.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

70-6-212. No duty to deliver without demand. A depositary is not bound to deliver a thing deposited without demand even where the deposit is made for a specified time.

History: En. Sec. 2451, Civ. C. 1895; re-en. Sec. 5140, Rev. C. 1907; re-en. Sec. 7643, R.C.M. 1921; Cal. Civ. C. Sec. 1823; Field Civ. C. Sec. 914; re-en. Sec. 7643, R.C.M. 1935; R.C.M. 1947, 20-108.

70-6-213. Place of delivery. A depositary shall deliver the thing deposited at the depositary's residence or place of business as may be most convenient for the depositary.

History: En. Sec. 2452, Civ. C. 1895; re-en. Sec. 5141, Rev. C. 1907; re-en. Sec. 7644, R.C.M. 1921; Cal. Civ. C. Sec. 1824; Field Civ. C. Sec. 915; re-en. Sec. 7644, R.C.M. 1935; R.C.M. 1947, 20-109; amd. Sec. 2087, Ch. 56, L. 2009.

70-6-214. Delivery of thing owned jointly. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each person a proper share of the thing if it can be done without injury to the thing.

History: En. Sec. 2455, Civ. C. 1895; re-en. Sec. 5144, Rev. C. 1907; re-en. Sec. 7647, R.C.M. 1921; Cal. Civ. C. Sec. 1827; Field Civ. C. Sec. 918; re-en. Sec. 7647, R.C.M. 1935; R.C.M. 1947, 20-112; amd. Sec. 2088, Ch. 56, L. 2009.

Part 3
Gratuitous Deposits

70-6-301. Gratuitous deposit defined. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

History: En. Sec. 2480, Civ. C. 1895; re-en. Sec. 5153, Rev. C. 1907; re-en. Sec. 7656, R.C.M. 1921; Cal. Civ. C. Sec. 1844; Field Civ. C. Sec. 927; re-en. Sec. 7656, R.C.M. 1935; R.C.M. 1947, 20-209.

70-6-302. Degree of care required of gratuitous depositary. A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

History: En. Sec. 2482, Civ. C. 1895; re-en. Sec. 5155, Rev. C. 1907; re-en. Sec. 7658, R.C.M. 1921; Cal. Civ. C. Sec. 1846; Field Civ. C. Sec. 929; re-en. Sec. 7658, R.C.M. 1935; R.C.M. 1947, 20-211.

70-6-303. When duties of gratuitous depositary cease. The duties of a gratuitous depositary cease upon the depositary's:

(1) restoring the thing deposited to its owner; or

(2) giving reasonable notice to the owner to remove it and the owner failing to do so within a reasonable time. However, an involuntary depositary under 70-6-103(2) may not give notice until the emergency that gave rise to the deposit is past.

History: En. Sec. 2483, Civ. C. 1895; re-en. Sec. 5156, Rev. C. 1907; re-en. Sec. 7659, R.C.M. 1921; Cal. Civ. C. Sec. 1847; Field Civ. C. Sec. 930; re-en. Sec. 7659, R.C.M. 1935; R.C.M. 1947, 20-212; amd. Sec. 2089, Ch. 56, L. 2009.

Part 4
Deposit for Hire

70-6-401. Applicability — Uniform Commercial Code. The provisions of this part apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 20-314 by Sec. 11-116, Ch. 264, L. 1963; R.C.M. 1947, 20-314.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9A.

70-6-402. Deposit for hire defined. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

History: En. Sec. 2490, Civ. C. 1895; re-en. Sec. 5157, Rev. C. 1907; re-en. Sec. 7660, R.C.M. 1921; Cal. Civ. C. Sec. 1851; Field Civ. C. Sec. 931; re-en. Sec. 7660, R.C.M. 1935; R.C.M. 1947, 20-301.

Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

70-6-403. Degree of care required of depositary for hire. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

History: En. Sec. 2491, Civ. C. 1895; re-en. Sec. 5158, Rev. C. 1907; re-en. Sec. 7661, R.C.M. 1921; Cal. Civ. C. Sec. 1852; Field Civ. C. Sec. 932; re-en. Sec. 7661, R.C.M. 1935; R.C.M. 1947, 20-302.

70-6-404. Rate of compensation for fraction of week or half month. In the absence of a different agreement or usage, a depositary for hire is entitled to 1 week's hire for the sustenance and shelter of living animals during any fraction of a week and to half a month's hire for the storage of any other property during any fraction of a half month.

History: En. Sec. 2492, Civ. C. 1895; re-en. Sec. 5159, Rev. C. 1907; re-en. Sec. 7662, R.C.M. 1921; Cal. Civ. C. Sec. 1853; Field Civ. C. Sec. 933; re-en. Sec. 7662, R.C.M. 1935; R.C.M. 1947, 20-303.

70-6-405. Termination of deposit. (1) In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time and by the depositary upon a reasonable notice.

(2) Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

History: En. Secs. 2493, 2494, Civ. C. 1895; re-en. Secs. 5160, 5161, Rev. C. 1907; re-en. Secs. 7663, 7664, R.C.M. 1921; Cal. Civ. C. Secs. 1854, 1855; Field Civ. C. Secs. 934, 935; re-en. Secs. 7663, 7664, R.C.M. 1935; R.C.M. 1947, 20-304, 20-305.

70-6-406 through 70-6-410 reserved.

70-6-411. Sale to pay costs of storage. (1) Any storage or commission merchant receiving personal property from any person for storage and any common carrier of goods by whom any personal property is lawfully stored before or after the transportation thereof may, after keeping the same in store for 90 days, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction to the highest bidder for cash, first giving notice of the time, the terms, and place of sale and a description of the property to be sold by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for 4 weeks next previous to the day of sale and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon.

(2) Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto in some other county in this state.

(3) But no more of such property shall be sold than is necessary to pay the charges due, together with the costs.

History: En. Sec. 1, p. 544, Cod. Stat. 1871; re-en. Sec. 1179, 5th Div. Rev. Stat. 1879; re-en. Sec. 1983, 5th Div. Comp. Stat. 1887; amd. Sec. 2495, Civ. C. 1895; amd. Sec. 1, p. 153, L. 1901; re-en. Sec. 5162, Rev. C. 1907; re-en. Sec. 7665, R.C.M. 1921; Cal. Civ. C. Secs. 1856, 1857; re-en. Sec. 7665, R.C.M. 1935; R.C.M. 1947, 20-306.

Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Sale of unclaimed baggage — notice, 70-9-501.

70-6-412. Application of proceeds of sale. (1) After paying the expenses of sale, including the publication of notice, the storage or commission merchant or the carrier is authorized, out of the proceeds arising from the sale of the property, to retain the amount due the merchant or carrier for storage or freight, or both, due upon any property, and the excess, if any, must be paid over to the person entitled to the proceeds.

(2) All sales under this part vest the title to the property sold in the purchaser of the property.

History: **En. Sec. 3, p. 545, Cod. Stat. 1871; re-en. Sec. 1181, 5th Div. Rev. Stat. 1879; re-en. Sec. 1895, 5th Div. Comp. Stat. 1887; amd. Sec. 2496, Civ. C. 1895; re-en. Sec. 2, p. 153, L. 1901; re-en. Sec. 5163, Rev. C. 1907; re-en. Sec. 7666, R.C.M. 1921; re-en. Sec. 7666, R.C.M. 1935; R.C.M. 1947, 20-307; amd. Sec. 2090, Ch. 56, L. 2009.**

70-6-413 through 70-6-419 reserved.

70-6-420. Repealed. Sec. 10, Ch. 222, L. 2017.

History: **En. Sec. 1, Ch. 472, L. 1991; amd. Sec. 2091, Ch. 56, L. 2009.**

Part 5
Innkeepers

70-6-501. Innkeeper's liability as to property of guests — dollar limitation. (1) An innkeeper is liable for all losses of or injuries to personal property placed by the guests under the innkeeper's care unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom the innkeeper brought into the inn.

(2) The liability provided for in subsection (1) may not exceed $500 for all personal property of each registered guest unless the innkeeper consents in writing with the guest to assume a greater liability. An innkeeper whose liability is limited shall notify the guest at the time of registration, in writing, that this limitation applies.

History: **En. Sec. 2500, Civ. C. 1895; re-en. Sec. 5164, Rev. C. 1907; re-en. Sec. 7673, R.C.M. 1921; Cal. Civ. C. Sec. 1859; Field Civ. C. Sec. 936; re-en. Sec. 7673, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1977; R.C.M. 1947, 34-101; amd. Sec. 2092, Ch. 56, L. 2009.**

70-6-502. No liability without negligence. A hotelkeeper or innkeeper is not liable to any guest for the loss of wearing apparel, goods, or personal effects when it appears that the loss occurred without the fault or negligence of the hotelkeeper or the innkeeper or the hotelkeeper's or innkeeper's employees.

History: **En. Sec. 2510, Civ. C. 1895; re-en. Sec. 5174, Rev. C. 1907; re-en. Sec. 7681, R.C.M. 1921; re-en. Sec. 7681, R.C.M. 1935; R.C.M. 1947, 34-109; amd. Sec. 2093, Ch. 56, L. 2009.**

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

70-6-503. Loss or damage by fire — liability for negligence. All innkeepers or hotelkeepers coming within the provisions of this part shall be liable for loss of or damage to any baggage or other property of their guests caused by fire in every case where such loss or damage is the result of the negligence of such keepers or their servants.

History: **En. Sec. 2509, Civ. C. 1895; re-en. Sec. 5173, Rev. C. 1907; re-en. Sec. 7680, R.C.M. 1921; re-en. Sec. 7680, R.C.M. 1935; R.C.M. 1947, 34-108.**

70-6-504. How exempted from liability — safe. If an innkeeper keeps a fireproof safe and gives notice to a guest, either personally or by placing a printed notice in a prominent place in the room occupied by the guest, that the innkeeper keeps a fireproof safe and will not be liable for any loss of or injury to money, jewelry, documents, or other articles of value and small size unless placed in the safe, the innkeeper is not liable, except so far as the innkeeper's own acts contribute to the loss of or injury to the articles not deposited with the innkeeper and not required by the guest for present use.

History: **En. Sec. 2501, Civ. C. 1895; re-en. Sec. 5165, Rev. C. 1907; re-en. Sec. 7674, R.C.M. 1921; Cal. Civ. C. Sec. 1860; Field. Civ. C. Sec. 937; re-en. Sec. 7674, R.C.M. 1935; R.C.M. 1947, 34-102; amd. Sec. 3, Ch. 115, L. 1979; amd. Sec. 2094, Ch. 56, L. 2009.**

70-6-505. Storage of property in outbuilding — nonliability. An innkeeper is not liable for the loss or destruction by fire of the property received by the innkeeper from a guest that is stored or kept with the knowledge of the guest in a barn or other outbuilding if it appears that the loss or destruction is the work of an incendiary and occurred without the fault or negligence of the innkeeper or the innkeeper's servants.

History: En. Sec. 2508, Civ. C. 1895; re-en. Sec. 5172, Rev. C. 1907; re-en. Sec. 7679, R.C.M. 1921; re-en. Sec. 7679, R.C.M. 1935; R.C.M. 1947, 34-107; amd. Sec. 2095, Ch. 56, L. 2009.

70-6-506 through 70-6-510 reserved.

70-6-511. Eviction of guests. (1) An innkeeper may evict a guest of a hotel, as defined in 50-51-102, who refuses or has otherwise failed to pay the bill when due. Before evicting a guest, the innkeeper shall demand payment of the bill and shall ask the guest to vacate the premises. If the guest does not pay the bill or leave following these requests, the innkeeper may lock the door to the guest's room, remove the guest's baggage and other personal property, or evict the guest by any other peaceful means. The innkeeper may hold the guest's baggage and other personal property but is subject to liability as provided in 70-6-501.

(2) An innkeeper may also evict a person, whether or not the person is a guest of the hotel, who:

(a) is under the influence of alcohol, drugs, or any other intoxicating substance and acts in a disorderly fashion so as to disturb the peace of other guests or is not in compliance with state liquor laws;

(b) acts in a disorderly fashion so as to disturb the peace of other guests;

(c) seeks to use the hotel for an unlawful purpose;

(d) seeks to bring into the hotel:

(i) an unlawfully possessed firearm; or

(ii) something, including an explosive or a hazardous or toxic substance, that it is unlawful to possess and that may be dangerous to other persons;

(e) destroys, damages, defaces, or threatens harm to hotel property or guests;

(f) causes or permits persons to exceed the maximum allowable occupancy of a hotel room as established by the innkeeper;

(g) refuses to abide by reasonable standards or policies established by the innkeeper for operation and management of the hotel.

History: En. Sec. 1, Ch. 335, L. 1995.

Cross-References

Roominghouse and transient guest defined, 50-51-102.

70-6-512. Innkeeper's responsibilities — limits. (1) An innkeeper may not be required to provide accommodations, facilities, or privileges of a hotel, as defined in 50-51-102, to a person who:

(a) is unwilling or unable to pay for the accommodations and services of the hotel. An innkeeper may require a prospective guest to demonstrate the ability to pay for the accommodations and services by paying a damage deposit in cash or with an accepted credit card.

(b) the innkeeper reasonably believes to be under the influence of alcohol, drugs, or another intoxicating substance or who acts in a disorderly fashion so as to disturb the peace of other guests;

(c) the innkeeper reasonably believes seeks to bring into the hotel :

(i) an unlawfully possessed firearm; or

(ii) something, including an explosive or a hazardous or toxic substance, that it is unlawful to possess and that may be dangerous to other persons;

(d) destroys, damages, defaces, or threatens harm to hotel property or guests;

(e) refuses to abide by reasonable standards or policies established by the innkeeper for operation and management of the hotel; or

(f) causes or permits persons to exceed the maximum allowable occupancy of a hotel room as established by the innkeeper.

(2) This section does not relieve an innkeeper from the responsibility to not engage in unlawful discriminatory practices as defined in 49-2-304 and other provisions of Title 49, chapter 2.

History: En. Sec. 2, Ch. 335, L. 1995.

70-6-513. Consumption or possession of alcohol — civil liability — licensure protection. The provisions of 27-1-710 apply to an innkeeper. A license to serve beer, wine, or liquor that is issued to an innkeeper may not be suspended, revoked, or refused renewal because of the unlawful consumption or possession of alcohol by a guest or occupant except under the provisions of Title 16, chapter 4.

History: En. Sec. 3, Ch. 335, L. 1995.

70-6-514. Liability of parent or guardian for minor's damage to public accommodation. If a minor willfully defaces or damages hotel property, the parent or guardian of the minor is liable for the cost of repair or replacement as provided in 40-6-237 and 40-6-238.

History: En. Sec. 4, Ch. 335, L. 1995.

Part 6
Self-Storage Facilities Act

Part Cross-References

Self-Storage Insurance Act, Title 33, ch. 24, part 3.

70-6-601. Short title. This part may be cited as the "Self-Storage Facilities Act".

History: En. Sec. 1, Ch. 222, L. 2017.

70-6-602. Definitions. As used in this part, the following definitions apply:

(1) "Commercially reasonable sale" means a sale that:

(a) is conducted at the self-storage facility, offsite at another location, or on a publicly accessible website that conducts lien sales; and

(b) is attended or viewed by at least three persons who appear personally or online, by telephone, or by any other method.

(2) "Default" means the failure to timely perform an obligation or duty set forth in a rental agreement or this part.

(3) "Electronic mail" means an electronic message or an executable program or computer file that contains an image that is transmitted between two or more computers or electronic terminals. The term includes an electronic message that is transmitted within or between computer networks.

(4) "Emergency" means a sudden, unexpected occurrence or circumstance at or near a self-storage facility that requires immediate action to avoid injury to persons or property at or near the self-storage facility. The term includes but is not limited to flood, fire, or any suspected use of the leased space for residential or other unlawful purposes.

(5) "Last-known address" means the postal address or electronic mail address provided in a rental agreement or the postal address or electronic mail address provided by the renter through subsequent written notice of a change of address.

(6) "Leased space" means the individual storage space at a self-storage facility that is rented to a renter pursuant to a rental agreement.

(7) "Operator" means the owner, operator, lessor, or sublessor of a self-storage facility or an agent or another person authorized to manage the facility or to receive rent from a renter under a rental agreement. The term does not include a warehouse operator if the warehouse operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored.

(8) "Personal property" means movable property not affixed to land. Personal property includes but is not limited to goods, wares, merchandise, motor vehicles, and other titled or otherwise registered vehicles or property.

(9) "Property that has no commercial value" means property offered for sale in a commercially reasonable sale that receives no bid or offer.

(10) "Rental agreement" means a written agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a leased space at a self-storage facility.

(11) "Renter" means a person entitled to the use of a leased space at a self-storage facility under a rental agreement or the person's successors or assigns.

(12) "Self-storage facility" means real property consisting of individual storage spaces in which a renter customarily stores and removes personal property on a self-service basis.

(13) "Verified mail" means:

(a) a method of mailing that is offered by the United States postal service or private delivery service and provides evidence of mailing; or

(b) a method of mailing that is accompanied by a certificate of mailing executed by the individual who caused the notice to be mailed.

History: En. Sec. 2, Ch. 222, L. 2017; amd. Sec. 1, Ch. 67, L. 2019.

Cross-References

Self-Storage Insurance Act, Title 33, ch. 24, part 3.

70-6-603. Self-storage use — prohibition on residential or other unlawful purposes. (1) An operator may not knowingly permit a leased space at a self-storage facility to be used for residential purposes.

(2) A renter may not use a leased space for residential or other unlawful purposes.

History: En. Sec. 3, Ch. 222, L. 2017; amd. Sec. 2, Ch. 67, L. 2019.

70-6-604. Operator inspection — repair — emergency. (1) An operator must notify the renter by telephone, regular mail, or electronic mail at least 3 days before entering a leased space for the purpose of inspection or repair. An operator shall disclose to the renter the nature of the inspection or repair.

(2) In the event of an emergency, an operator may enter a leased space for inspection or repair without notice to or consent from the renter. An operator who enters a leased space in the event of an emergency shall notify the renter by telephone, regular mail, or electronic mail within 48 hours after the incident:

(a) that the operator entered the leased space; and

(b) of the nature of the emergency.

(3) An operator shall maintain a record of instances of entering a leased space for inspection, repair, or emergency.

(4) A notice sent by regular mail is considered delivered when postmarked and properly addressed with postage paid. A notice sent by electronic mail is considered delivered on the date the electronic mail is sent to the last-known address provided by the renter.

History: En. Sec. 4, Ch. 222, L. 2017; amd. Sec. 3, Ch. 67, L. 2019.

70-6-605. Renter's personal property — operator's lien — rental agreement — value of contents. (1) The operator of a self-storage facility shall have a lien on all of a renter's personal property located at the self-storage facility for rent, late fees, legal fees, labor, or other charges incurred pursuant to a rental agreement and for expenses incurred for preservation, sale, or disposition of the personal property. The lien established by this subsection has priority over all other liens except for liens that have been perfected and recorded on such personal property and tax liens.

(2) The lien in subsection (1) attaches on the date that the personal property is placed in a leased space.

(3) The rental agreement must contain a statement advising the renter:

(a) of the existence of the lien; and

(b) that personal property stored in the leased space may be sold to satisfy the lien if the renter is in default.

(4) If the rental agreement specifies a limit on the value of personal property that the renter may store in the leased space, the limit must be deemed to be the maximum value of the personal property in the renter's leased space.

History: En. Sec. 5, Ch. 222, L. 2017.

70-6-606. Renter default — access restriction. (1) The operator has the right to deny the renter access to the leased space at the self-storage facility if:

(a) the rent or other charges due from the renter is delinquent and unpaid;

(b) the leased space is being used for residential or other unlawful purposes; or

(c) the renter fails to vacate the leased space after the rental agreement is terminated in accordance with its terms.

(2) A reasonable late fee may be imposed and collected by an operator for each period that a renter does not pay rent or other charges when due under the rental agreement if the amount of the late fee and the conditions for imposing the fee are stated in the rental agreement or in an

addendum to that agreement. A late fee of $20 or 20% of the monthly rent, whichever is greater, is a reasonable fee and may not be considered a penalty. Any reasonable expense incurred as a result of rent collection or lien enforcement by an operator may be charged to the renter in addition to late fees.

(3) A renter who purposely or knowingly accesses a leased space after having been in default of the rental agreement and denied access under subsection (1) may be prosecuted under Title 45, chapter 6.

History: En. Sec. 6, Ch. 222, L. 2017; amd. Sec. 4, Ch. 67, L. 2019.

70-6-607. Renter default — personal property sale. (1) If a renter is in default for a period of more than 60 days, the operator may enforce the lien provided in 70-6-605 by selling the renter's stored personal property at a commercially reasonable sale. Personal property may be sold:

(a) as a unit or in parcels; or

(b) by way of one or more contracts.

(2) The operator may otherwise dispose of property that has no commercial value.

(3) Before conducting a sale under this section, the operator shall:

(a) at least 30 days before the sale, send notice of default to the renter. The notice of default must include:

(i) a statement that the contents of the renter's leased space are subject to the operator's lien;

(ii) a statement of the operator's claim, indicating the charges due on the date of the notice and that additional charges shall continue to accrue and become due;

(iii) a demand for payment of the charges due and a deadline for payment;

(iv) a statement that unless the claim is paid before the deadline, the contents of the renter's leased space will be sold or otherwise disposed of after a specified time; and

(v) the name, street address, and telephone number of the operator or a designated agent that the renter may contact to respond to the notice.

(b) at least 7 days before the sale, notify by verified mail or electronic mail, if provided by the renter, the date, time, and location of the sale;

(c) at least 7 days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the county where the sale is to be held. Alternatively, the operator may advertise the sale in any other commercially reasonable manner. The manner of advertisement is commercially reasonable if the sale is attended or viewed by at least three persons who appear personally or online, by telephone, or by any other method at the time and place advertised.

(4) If the personal property subject to the operator's lien is titled, registered, or owned by public record and if charges or rent remain unpaid for 60 days, the operator may have the personal property removed from the self-storage facility by a professional transfer or tow truck company, including but not limited to motor vehicles, watercraft, aircraft, and trailers. The operator is not liable for any damage to personal property under this subsection after the professional transfer or tow truck company takes possession of the property.

(5) At any time before a sale is held under this section or before a vehicle, watercraft, aircraft, or trailer is removed under this section, the renter may pay the amount necessary to satisfy the lien and access the renter's personal property.

(6) If a sale is held under this section, the operator shall:

(a) satisfy the lien with the proceeds of the sale; and

(b) send a check of the net proceeds to the renter at the renter's last-known address or to any other recorded lienholder. The operator is not liable to any party for excess proceeds paid to the renter. If the check has not been cashed after 1 year, any remaining proceeds are considered abandoned property and must be reported and paid to the department of revenue in accordance with the Uniform Unclaimed Property Act in Title 70, chapter 9, part 8.

(7) A purchaser in good faith of any personal property sold pursuant to this section to satisfy the lien granted in 70-6-605 takes the property free and clear of any rights of persons against whom the lien was valid, despite noncompliance by the operator with the requirements of this part.

(8) Notices to the renter under subsection (3) must be sent to the renter's last-known address by verified mail or electronic mail, if provided by the renter. Notices sent by verified mail are considered delivered when postmarked and properly addressed with postage paid. Notices sent by electronic mail are considered delivered on the date the electronic mail is sent to the last-known address provided by the renter.

(9) If the operator complies with the requirements of this section, the operator's liability:

(a) to the renter is limited to the net proceeds received from the sale of the renter's personal property until the proceeds escheat to the state according to subsection (6)(b); and

(b) to other lienholders is limited to the net proceeds received from the sale of any personal property covered by the other lienholder's lien property until the proceeds escheat to the state according to subsection (6)(b).

History: En. Sec. 7, Ch. 222, L. 2017; amd. Sec. 5, Ch. 67, L. 2019.

70-6-608. Renter's rights. Unless the rental agreement specifically provides otherwise and until a lien sale under 70-6-607, the exclusive care, custody, and control of all personal property stored in a leased space remains vested in the renter.

History: En. Sec. 8, Ch. 222, L. 2017.

70-6-609. Rights of parties — rental agreements — compliance with Servicemembers Civil Relief Act. (1) This part does not impair the power of the parties to a rental agreement to create rights, duties, or obligations that do not arise from this part. The rights provided to an operator by this part are in addition to all other rights provided by law to a creditor against a debtor.

(2) If the rental agreement is with a service member, the operator shall comply with all terms of the Servicemembers Civil Relief Act, 50 U.S.C. 3901, et seq.

History: En. Sec. 9, Ch. 222, L. 2017.

CHAPTER 7
LOANS FOR USE OR EXCHANGE PERSONAL PROPERTY

Part 1 — Loan for Use

70-7-101. Optional loan — use or exchange — applicability of entire chapter.
70-7-102. Loan for use defined.
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70-7-104. Care required of borrower generally.
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Part 2 — Loan for Exchange

70-7-201. Certain sections of previous part applicable.
70-7-202. Loan for exchange defined.
70-7-203. Title to property lent — expenses — increase.
70-7-204. Contract not to be modified by lender.

Part 1
Loan for Use

70-7-101. Optional loan — use or exchange — applicability of entire chapter. A loan that the borrower is allowed by the lender to treat as a loan for use or for exchange, at the borrower's option, is subject to all of the provisions of this chapter.

History: En. Sec. 2571, Civ. C. 1895; re-en. Sec. 5202, Rev. C. 1907; re-en. Sec. 7716, R.C.M. 1921; Cal. Civ. C. Sec. 1903; Field Civ. C. Sec. 962; re-en. Sec. 7716, R.C.M. 1935; R.C.M. 1947, 47-115; amd. Sec. 2096, Ch. 56, L. 2009.

70-7-102. Loan for use defined. A loan for use is a contract by which one gives to another the temporary use and possession of personal property and the latter agrees to return the same thing to the loaning person at a future time without reward for its use.

History: En. Sec. 2550, Civ. C. 1895; re-en. Sec. 5188, Rev. C. 1907; re-en. Sec. 7702, R.C.M. 1921; Cal. Civ. C. Sec. 1884; Field Civ. C. Sec. 948; re-en. Sec. 7702, R.C.M. 1935; R.C.M. 1947, 47-101; amd. Sec. 2097, Ch. 56, L. 2009.

Cross-References

Retail installment sales, Title 31, ch. 1, part 2.

70-7-103. Title not transferred — increase. A loan for use does not transfer the title to the thing, and all its increase during the period of the loan belongs to the lender.

History: En. Sec. 2551, Civ. C. 1895; re-en. Sec. 5189, Rev. C. 1907; re-en. Sec. 7703, R.C.M. 1921; Cal. Civ. C. Sec. 1885; Field Civ. C. Sec. 949; re-en. Sec. 7703, R.C.M. 1935; R.C.M. 1947, 47-102.

70-7-104. Care required of borrower generally. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

History: En. Sec. 2552, Civ. C. 1895; re-en. Sec. 5190, Rev. C. 1907; re-en. Sec. 7704, R.C.M. 1921; Cal. Civ. C. Sec. 1886; Field Civ. C. Sec. 950; re-en. Sec. 7704, R.C.M. 1935; R.C.M. 1947, 47-103.

70-7-105. Borrower of animal — care required. One who borrows a living animal for use must treat it with great kindness and provide everything necessary and suitable for it.

History: En. Sec. 2553, Civ. C. 1895; re-en. Sec. 5191, Rev. C. 1907; re-en. Sec. 7705, R.C.M. 1921; Cal. Civ. C. Sec. 1887; Field Civ. C. Sec. 951; re-en. Sec. 7705, R.C.M. 1935; R.C.M. 1947, 47-104.

70-7-106. Skill required of borrower. A borrower for use is bound to have and to exercise skill in the care of the thing lent that the borrower causes the lender to believe that the borrower possesses.

History: En. Sec. 2554, Civ. C. 1895; re-en. Sec. 5192, Rev. C. 1907; re-en. Sec. 7706, R.C.M. 1921; Cal. Civ. C. Sec. 1888; Field Civ. C. Sec. 952; re-en. Sec. 7706, R.C.M. 1935; R.C.M. 1947, 47-105; amd. Sec. 2098, Ch. 56, L. 2009.

70-7-107. Borrower to repair injuries. A borrower for use shall repair all deteriorations or injuries to the thing lent that are occasioned by the borrower's negligence, however slight.

History: En. Sec. 2555, Civ. C. 1895; re-en. Sec. 5193, Rev. C. 1907; re-en. Sec. 7707, R.C.M. 1921; Cal. Civ. C. Sec. 1889; Field Civ. C. Sec. 953; re-en. Sec. 7707, R.C.M. 1935; R.C.M. 1947, 47-106; amd. Sec. 2099, Ch. 56, L. 2009.

70-7-108. Use of thing lent — what permitted. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

History: En. Sec. 2556, Civ. C. 1895; re-en. Sec. 5194, Rev. C. 1907; re-en. Sec. 7708, R.C.M. 1921; Cal. Civ. C. Sec. 1890; Field Civ. C. Sec. 954; re-en. Sec. 7708, R.C.M. 1935; R.C.M. 1947, 47-107.

70-7-109. Relending forbidden. The borrower of a thing for use must not part with it to a third person without the consent of the lender.

History: En. Sec. 2557, Civ. C. 1895; re-en. Sec. 5195, Rev. C. 1907; re-en. Sec. 7709, R.C.M. 1921; Cal. Civ. C. Sec. 1891; Field Civ. C. Sec. 955; re-en. Sec. 7709, R.C.M. 1935; R.C.M. 1947, 47-108.

70-7-110. Who to bear expenses. The borrower of a thing for use shall bear all its expenses during the loan except those that are necessarily incurred by the borrower to preserve it from unexpected and unusual injury. The borrower is entitled to compensation for those expenses from the lender, who may, however, be exonerated by surrendering the thing to the borrower.

History: En. Sec. 2558, Civ. C. 1895; re-en. Sec. 5196, Rev. C. 1907; re-en. Sec. 7710, R.C.M. 1921; Cal. Civ. C. Sec. 1892; Field Civ. C. Sec. 956; re-en. Sec. 7710, R.C.M. 1935; R.C.M. 1947, 47-109; amd. Sec. 2100, Ch. 56, L. 2009.

70-7-111. Lender liable for concealed defects. The lender of a thing for use shall indemnify the borrower for damage caused by defects or vices in the thing that the lender knew at the time of lending and concealed from the borrower.

History: En. Sec. 2559, Civ. C. 1895; re-en. Sec. 5197, Rev. C. 1907; re-en. Sec. 7711, R.C.M. 1921; Cal. Civ. C. Sec. 1893; Field Civ. C. Sec. 957; re-en. Sec. 7711, R.C.M. 1935; R.C.M. 1947, 47-110; amd. Sec. 2101, Ch. 56, L. 2009.

70-7-112. Right of lender to require return — indemnification of borrower. The lender of a thing for use may at any time require its return, even though the lender lent it for a specified time or purpose. However, if on the faith of an agreement the borrower has made arrangements that a return of the thing before the period agreed upon would cause the borrower loss exceeding the benefit derived by the borrower from the loan, the lender shall indemnify the borrower for the loss if the lender compels a return and the borrower has not in any manner violated the borrower's duty.

History: En. Sec. 2560, Civ. C. 1895; re-en. Sec. 5198, Rev. C. 1907; re-en. Sec. 7712, R.C.M. 1921; Cal. Civ. C. Sec. 1894; Field Civ. C. Sec. 958; re-en. Sec. 7712, R.C.M. 1935; R.C.M. 1947, 47-111; amd. Sec. 2102, Ch. 56, L. 2009.

70-7-113. When returnable without demand. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand as soon as the time has expired or the purpose has been accomplished. In other cases it need not be returned until demanded.

History: En. Sec. 2561, Civ. C. 1895; re-en. Sec. 5199, Rev. C. 1907; re-en. Sec. 7713, R.C.M. 1921; Cal. Civ. C. Sec. 1895; Field Civ. C. Sec. 959; re-en. Sec. 7713, R.C.M. 1935; R.C.M. 1947, 47-112.

70-7-114. Place of return. The borrower of a thing for use must return it to the lender at the place contemplated by the parties at the time of lending or, if no particular place was so contemplated by them, then at the place where it was at that time.

History: En. Sec. 2562, Civ. C. 1895; re-en. Sec. 5200, Rev. C. 1907; re-en. Sec. 7714, R.C.M. 1921; Cal. Civ. C. Sec. 1896; Field Civ. C. Sec. 960; re-en. Sec. 7714, R.C.M. 1935; R.C.M. 1947, 47-113.

Part 2
Loan for Exchange

70-7-201. Certain sections of previous part applicable. Sections 70-7-111, 70-7-112, and 70-7-113 apply to a loan for exchange.

History: En. Sec. 2574, Civ. C. 1895; re-en. Sec. 5205, Rev. C. 1907; re-en. Sec. 7719, R.C.M. 1921; Cal. Civ. C. Sec. 1906; Field Civ. C. Sec. 965; re-en. Sec. 7719, R.C.M. 1935; R.C.M. 1947, 47-118.

70-7-202. Loan for exchange defined. A loan for exchange is a contract by which one delivers personal property to another and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

History: En. Sec. 2570, Civ. C. 1895; re-en. Sec. 5201, Rev. C. 1907; re-en. Sec. 7715, R.C.M. 1921; Cal. Civ. C. Sec. 1902; Field Civ. C. Sec. 961; re-en. Sec. 7715, R.C.M. 1935; R.C.M. 1947, 47-114.

70-7-203. Title to property lent — expenses — increase. The title to the thing lent by a loan for exchange is transferred to the borrower, and the borrower shall bear all its expenses and is entitled to all its increase.

History: En. Sec. 2572, Civ. C. 1895; re-en. Sec. 5203, Rev. C. 1907; re-en. Sec. 7717, R.C.M. 1921; Cal. Civ. C. Sec. 1904; re-en. Sec. 7717, R.C.M. 1935; R.C.M. 1947, 47-116; amd. Sec. 2103, Ch. 56, L. 2009.

70-7-204. Contract not to be modified by lender. A lender for exchange cannot require the borrower to fulfill the borrower's obligations at a time or in a manner different from that which was originally agreed upon.

History: En. Sec. 2573, Civ. C. 1895; re-en. Sec. 5204, Rev. C. 1907; re-en. Sec. 7718, R.C.M. 1921; Cal. Civ. C. Sec. 1905; Field Civ. C. Sec. 964; re-en. Sec. 7718, R.C.M. 1935; R.C.M. 1947, 47-117; amd. Sec. 2104, Ch. 56, L. 2009.

CHAPTER 8
RENTALS OF PERSONAL PROPERTY

Part 1 — General Provisions (Repealed)

Part 2 — Rental of Ships

70-8-201. Contract for letting of ship.

Part 1
General Provisions
(Repealed)

70-8-101. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 2640, Civ. C. 1895; re-en. Sec. 5236, Rev. C. 1907; re-en. Sec. 7751, R.C.M. 1921; Cal. Civ. C. Sec. 1955; Field Civ. C. Sec. 999; re-en. Sec. 7751, R.C.M. 1935; R.C.M. 1947, 42-211.

70-8-102. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 2641, Civ. C. 1895; re-en. Sec. 5237, Rev. C. 1907; re-en. Sec. 7752, R.C.M. 1921; Cal. Civ. C. Sec. 1956; Field Civ. C. Sec. 1000; re-en. Sec. 7752, R.C.M. 1935; R.C.M. 1947, 42-212.

70-8-103. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 2642, Civ. C. 1895; re-en. Sec. 5238, Rev. C. 1907; re-en. Sec. 7753, R.C.M. 1921; Cal. Civ. C. Sec. 1957; Field Civ. C. Sec. 1001; re-en. Sec. 7753, R.C.M. 1935; R.C.M. 1947, 42-213.

70-8-104. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 2643, Civ. C. 1895; re-en. Sec. 5239, Rev. C. 1907; re-en. Sec. 7754, R.C.M. 1921; Cal. Civ. C. Sec. 1958; Field Civ. C. Sec. 1002; re-en. Sec. 7754, R.C.M. 1935; R.C.M. 1947, 42-214.

Part 2
Rental of Ships

70-8-201. Contract for letting of ship. The contract by which a ship is let is termed a charter party. As part of the contract, the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them. The master or part owner may be a charterer.

History: En. Sec. 2644, Civ. C. 1895; re-en. Sec. 5240, Rev. C. 1907; re-en. Sec. 7755, R.C.M. 1921; Cal. Civ. C. Sec. 1959; Field Civ. C. Sec. 1003; re-en. Sec. 7755, R.C.M. 1935; R.C.M. 1947, 42-215; amd. Sec. 2105, Ch. 56, L. 2009.

CHAPTER 9
DISPOSITION OF UNCLAIMED PROPERTY

Part 1 — General Provisions (Repealed)

Part 2 — Presumption of Abandonment Kinds of Property (Repealed)

Part 3 — Procedure (Repealed)

Part 4 — Common Carriers, Commission Merchants, and Warehousemen

70-9-401. Applicability — Uniform Commercial Code.
70-9-402. Storage of unclaimed property.
70-9-403. Property unclaimed within 90 days to be sold — notice — surplus.
70-9-404. Surplus proceeds unclaimed — disposition.
70-9-405. Responsibility of carrier and bailee after storage.
70-9-406. Sale of property upon which advances are due.
70-9-407. Fees of officers.

Part 5 — Innkeepers

70-9-501. Sale of unclaimed baggage — notice.
70-9-502. Disposition of surplus proceeds.

Part 6 — Retail Launderers and Dry Cleaners

70-9-601. Disposal of property unclaimed within 180 days — notice — maintenance of records.

Part 7 — Foreign Capital Depositories (Repealed)

Part 8 — Uniform Unclaimed Property Act

70-9-801. Short title.
70-9-802. Definitions.
70-9-803. Presumptions of abandonment.
70-9-804. Contents of safe deposit box or other safekeeping depository.
70-9-805. Rules for taking custody.
70-9-806. Dormancy charge.
70-9-807. Burden of proof as to property evidenced by record of check or draft.
70-9-808. Report of abandoned property.
70-9-809. Payment or delivery of abandoned property.
70-9-810. Notice and publication of lists of abandoned property.
70-9-811. Custody by state — recovery by holder — defense of holder.
70-9-812. Public sale of abandoned property.
70-9-813. Deposit of funds.
70-9-814. Claim of another state to recover property.
70-9-815. Filing claim with administrator — handling of claims by administrator — exception.
70-9-816. Action to establish claim.
70-9-817. Election to take payment or delivery.

70-9-818. Destruction or disposition of property having no substantial commercial value — immunity from liability.
70-9-819. Periods of limitation.
70-9-820. Requests for reports, examination of records, and confidentiality.
70-9-821. Retention of records.
70-9-822. Enforcement.
70-9-823. Interstate agreements and cooperation — joint and reciprocal actions with other states.
70-9-824. Interest and penalties.
70-9-825. Agreement to locate property.
70-9-826. Foreign transactions.
70-9-827. Transitional provisions.
70-9-828. Rules.
70-9-829. Uniformity of application and construction.
70-9-830. When security presumed abandoned.

Chapter Cross-References

State warrants — presentation and cancellation — failure to claim payment, 17-8-303.

Part 1
General Provisions
(Repealed)

70-9-101. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 30, Ch. 244, L. 1963; R.C.M. 1947, 67-2230; amd. Sec. 1, Ch. 269, L. 1983.

70-9-102. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 1, Ch. 244, L. 1963; R.C.M. 1947, 67-2201; amd. Sec. 2, Ch. 269, L. 1983.

70-9-103. Repealed. Sec. 13, Ch. 269, L. 1983.

History: En. Secs. 10, 27, Ch. 244, L. 1963; R.C.M. 1947, 67-2210, 67-2227.

70-9-104. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 29, Ch. 244, L. 1963; R.C.M. 1947, 67-2229.

70-9-105. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 26, Ch. 244, L. 1963; amd. Sec. 16, Ch. 216, L. 1971; amd. Sec. 39, Ch. 391, L. 1973; R.C.M. 1947, 67-2226.

70-9-106. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 12, Ch. 630, L. 1985; amd. Sec. 1, Ch. 5, L. 1987.

70-9-107 through 70-9-110 reserved.

70-9-111. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 3, Ch. 269, L. 1983.

70-9-112 through 70-9-120 reserved.

70-9-121. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 11, Ch. 269, L. 1983.

70-9-122. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 12, Ch. 269, L. 1983.

Part 2
Presumption of Abandonment Kinds of Property
(Repealed)

70-9-201. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 2, Ch. 244, L. 1963; amd. Sec. 1, Ch. 226, L. 1967; R.C.M. 1947, 67-2202; amd. Sec. 2, Ch. 5, L. 1987; amd. Sec. 1, Ch. 143, L. 1989.

70-9-202. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 3, Ch. 244, L. 1963; R.C.M. 1947, 67-2203; amd. Sec. 3, Ch. 5, L. 1987.

70-9-203. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 4, Ch. 244, L. 1963; R.C.M. 1947, 67-2204; amd. Sec. 4, Ch. 5, L. 1987; amd. Sec. 2, Ch. 263, L. 1993.

70-9-204. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 5, Ch. 244, L. 1963; R.C.M. 1947, 67-2205; amd. Sec. 1, Ch. 575, L. 1979; amd. Sec. 5, Ch. 5, L. 1987.

70-9-205. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 6, Ch. 244, L. 1963; R.C.M. 1947, 67-2206; amd. Sec. 2, Ch. 575, L. 1979.

70-9-206. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 7, Ch. 244, L. 1963; R.C.M. 1947, 67-2207; amd. Sec. 6, Ch. 5, L. 1987.

70-9-207. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 8, Ch. 244, L. 1963; R.C.M. 1947, 67-2208; amd. Sec. 3, Ch. 575, L. 1979; amd. Sec. 7, Ch. 5, L. 1987.

70-9-208. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 9, Ch. 244, L. 1963; R.C.M. 1947, 67-2209; amd. Sec. 8, Ch. 5, L. 1987.

70-9-209. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 4, Ch. 269, L. 1983; amd. Sec. 9, Ch. 5, L. 1987.

70-9-210. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 1, Ch. 654, L. 1991.

Part 3
Procedure (Repealed)

70-9-301. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967; amd. Sec. 1, Ch. 216, L. 1971; amd. Sec. 24, Ch. 391, L. 1973; amd. Sec. 1, Ch. 195, L. 1977; R.C.M. 1947, 67-2211(1) thru (6); amd. Sec. 6, Ch. 269, L. 1983; amd. Sec. 10, Ch. 5, L. 1987; amd. Sec. 2, Ch. 654, L. 1991; amd. Sec. 3, Ch. 263, L. 1993.

70-9-302. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967; amd. Sec. 2, Ch. 216, L. 1971; amd. Sec. 25, Ch. 391, L. 1973; R.C.M. 1947, 67-2212; amd. Sec. 4, Ch. 115, L. 1979; amd. Sec. 4, Ch. 575, L. 1979; amd. Sec. 7, Ch. 269, L. 1983; amd. Sec. 3, Ch. 654, L. 1991.

70-9-303. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967; amd. Sec. 3, Ch. 216, L. 1971; amd. Sec. 26, Ch. 391, L. 1973; R.C.M. 1947, 67-2213; (2), (3)En. Sec. 5, Ch. 269, L. 1983; amd. Sec. 4, Ch. 654, L. 1991.

70-9-304. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973; R.C.M. 1947, 67-2214(part); amd. Sec. 5, Ch. 575, L. 1979.

70-9-305. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973; R.C.M. 1947, 67-2214(part).

70-9-306. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 15, Ch. 244, L. 1963; amd. Sec. 5, Ch. 216, L. 1971; amd. Sec. 28, Ch. 391, L. 1973; R.C.M. 1947, 67-2215.

70-9-307. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 16, Ch. 244, L. 1963; amd. Sec. 6, Ch. 216, L. 1971; amd. Sec. 29, Ch. 391, L. 1973; R.C.M. 1947, 67-2216; amd. Sec. 8, Ch. 269, L. 1983; amd. Sec. 5, Ch. 654, L. 1991.

70-9-308. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 17, Ch. 244, L. 1963; amd. Sec. 7, Ch. 216, L. 1971; amd. Sec. 30, Ch. 391, L. 1973; R.C.M. 1947, 67-2217; amd. Sec. 6, Ch. 575, L. 1979.

70-9-309. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 18, Ch. 244, L. 1963; amd. Sec. 8, Ch. 216, L. 1971; amd. Sec. 31, Ch. 391, L. 1973; R.C.M. 1947, 67-2218; amd. Sec. 30, Ch. 281, L. 1983; amd. Sec. 4, Ch. 263, L. 1993; amd. Sec. 3, Ch. 5, L. 1995.

70-9-310. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 19, Ch. 244, L. 1963; amd. Sec. 9, Ch. 216, L. 1971; amd. Sec. 32, Ch. 391, L. 1973; amd. Sec. 2, Ch. 195, L. 1977; R.C.M. 1947, 67-2219.

70-9-311. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 20, Ch. 244, L. 1963; amd. Sec. 10, Ch. 216, L. 1971; amd. Sec. 33, Ch. 391, L. 1973; amd. Sec. 9, Ch. 155, L. 1977; R.C.M. 1947, 67-2220.

70-9-312. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 21, Ch. 244, L. 1963; amd. Sec. 11, Ch. 216, L. 1971; amd. Sec. 34, Ch. 391, L. 1973; amd. Sec. 10, Ch. 155, L. 1977; R.C.M. 1947, 67-2221.

70-9-313. Repealed. Sec. 8, Ch. 654, L. 1991.

History: En. Sec. 22, Ch. 244, L. 1963; amd. Sec. 12, Ch. 216, L. 1971; amd. Sec. 35, Ch. 391, L. 1973; R.C.M. 1947, 67-2222.

70-9-314. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 23, Ch. 244, L. 1963; amd. Sec. 13, Ch. 216, L. 1971; amd. Sec. 36, Ch. 391, L. 1973; R.C.M. 1947, 67-2223; amd. Sec. 1, Ch. 128, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 9, Ch. 269, L. 1983; amd. Sec. 1, Ch. 14, L. 1989.

70-9-315. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 24, Ch. 244, L. 1963; amd. Sec. 14, Ch. 216, L. 1971; amd. Sec. 37, Ch. 391, L. 1973; R.C.M. 1947, 67-2224.

70-9-316. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 25, Ch. 244, L. 1963; amd. Sec. 15, Ch. 216, L. 1971; amd. Sec. 38, Ch. 391, L. 1973; R.C.M. 1947, 67-2225; amd. Sec. 10, Ch. 269, L. 1983.

Part 4

Common Carriers, Commission Merchants, and Warehousemen

70-9-401. Applicability — Uniform Commercial Code. The provisions of this part apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 20-314 by Sec. 11-116, Ch. 264, L. 1963; R.C.M. 1947, 20-314.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9A.

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

70-9-402. Storage of unclaimed property. When goods, merchandise, or other property has been received by a railroad or express company or other common carrier, commission merchants, or warehouse operator for transportation or safekeeping and is not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, or warehouse operator may hold or store the goods, merchandise, or property with some responsible person until the freight and all just and reasonable charges are paid.

History: En. Sec. 2920, Pol. C. 1895; re-en. Sec. 2003, Rev. C. 1907; re-en. Sec. 7667, R.C.M. 1921; Cal. Pol. C. Sec. 3152; re-en. Sec. 7667, R.C.M. 1935; R.C.M. 1947, 20-308; amd. Sec. 2106, Ch. 56, L. 2009.

70-9-403. Property unclaimed within 90 days to be sold — notice — surplus. (1) If a person does not call for the property within 90 days from the receipt of the property and pay freight and charges on the property, the carrier, commission merchant, or warehouse operator may sell the property or as much of the property, at auction to the highest bidder, as will pay freight and charges after giving 20 days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper for 10 days or in a weekly paper for 4 weeks, published where the sale is to take place.

(2) If any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the surplus must be paid to the owner of the property at any time upon demand being made or within 60 days after the sale.

History: En. Sec. 2921, Pol. C. 1895; re-en. Sec. 2004, Rev. C. 1907; re-en. Sec. 7668, R.C.M. 1921; Cal. Pol. C. Sec. 3153; re-en. Sec. 7668, R.C.M. 1935; R.C.M. 1947, 20-309; amd. Sec. 2107, Ch. 56, L. 2009.

70-9-404. Surplus proceeds unclaimed — disposition. If the owner or the owner's agent fails to demand the surplus within 60 days of the time of sale, then it must be paid into the county treasury, subject to the order of the owner.

History: En. Sec. 2922, Pol. C. 1895; re-en. Sec. 2005, Rev. C. 1907; re-en. Sec. 7669, R.C.M. 1921; Cal. Pol. C. Sec. 3154; re-en. Sec. 7669, R.C.M. 1935; R.C.M. 1947, 20-310; amd. Sec. 2108, Ch. 56, L. 2009.

70-9-405. Responsibility of carrier and bailee after storage. After the storage of goods, merchandise, or property as provided in this part, the responsibility of the carrier ceases and the person with whom the goods, merchandise, or property is stored is not liable for any loss or damage on account of the storage unless the loss or damage results from the person's negligence or want of proper care.

History: En. Sec. 2923, Pol. C. 1895; re-en. Sec. 2006, Rev. C. 1907; re-en. Sec. 7670, R.C.M. 1921; Cal. Pol. Sec. 3155; re-en. Sec. 7670, R.C.M. 1935; R.C.M. 1947, 20-311; amd. Sec. 2109, Ch. 56, L. 2009.

70-9-406. Sale of property upon which advances are due. When a commission merchant or warehouse operator receives on consignment produce, merchandise, or other property and makes advances on the produce, merchandise, or property, either to the owner or for freight and charges, the person may, if the freight and charges are not paid within 90 days from the date of the advances, cause the produce, merchandise, or property on which the advances were made to be advertised and sold as provided in this part.

History: En. Sec. 2924, Pol. C. 1895; re-en. Sec. 2007, Rev. C. 1907; re-en. Sec. 7671, R.C.M. 1921; Cal. Pol. C. Sec. 3156; re-en. Sec. 7671, R.C.M. 1935; R.C.M. 1947, 20-312; amd. Sec. 2110, Ch. 56, L. 2009.

70-9-407. Fees of officers. The fees of officers under this part are the same as allowed for similar services in other cases provided in this code to be paid by the taker-up or finder and recovered of the owner.

History: En. Sec. 2925, Pol. C. 1895; re-en. Sec. 2008, Rev. C. 1907; re-en. Sec. 7672, R.C.M. 1921; Cal. Pol. C. Sec. 3157; re-en. Sec. 7672, R.C.M. 1935; R.C.M. 1947, 20-313.

Part 5
Innkeepers

Part Cross-References

Performance to one of several joint creditors, 28-1-1103.

70-9-501. Sale of unclaimed baggage — notice. (1) Whenever any trunk, carpetbag, valise, box, bundle, or other baggage comes into the possession of the keeper of any hotel, inn, boardinghouse, or lodginghouse, as such, and remains unclaimed for the period of 6 months, such keeper may proceed to sell the same at public auction and out of the proceeds of such sale may retain the charges for storage, if any, and the expense of advertising and sale thereof.

(2) But no such sale shall be made until the expiration of 4 weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, or place in which said hotel, inn, boardinghouse, or lodginghouse is situated.

(3) Said notice shall be published once a week for 4 successive weeks in some newspaper, daily or weekly, of general circulation and shall contain:

(a) a description of each trunk, carpetbag, valise, box, bundle, or other baggage, as near as may be;

(b) the name of the owner, if known;

(c) the name of said keeper and the time and place of sale.

(4) The expenses incurred for advertising shall be a lien upon such trunk, carpetbag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property or thing or article sold.

History: En. Sec. 2503, Civ. C. 1895; re-en. Sec. 5167, Rev. C. 1907; re-en. Sec. 7676, R.C.M. 1921; Cal. Civ. C. Sec. 1862; re-en. Sec. 7676, R.C.M. 1935; R.C.M. 1947, 34-104(part).

70-9-502. Disposition of surplus proceeds. If any balance arising from the sale is not claimed by the rightful owner within 1 week from the day of the sale, the balance must be paid into the treasury of the county in which the sale took place, and if the balance is not claimed by the owner or the owner's legal representatives within 1 year after the sale, the balance must be paid into the general fund of the county.

History: En. Sec. 2503, Civ. C. 1895; re-en. Sec. 5167, Rev. C. 1907; re-en. Sec. 7676, R.C.M. 1921; Cal. Civ. C. Sec. 1862; re-en. Sec. 7676, R.C.M. 1935; R.C.M. 1947, 34-104(part); amd. Sec. 2111, Ch. 56, L. 2009.

Part 6
Retail Launderers and Dry Cleaners

70-9-601. Disposal of property unclaimed within 180 days — notice — maintenance of records. (1) A retail launderer or dry cleaner may dispose of an article, garment, or piece of clothing left with the launderer or dry cleaner for cleaning, laundering, repairing, or other service that is not redeemed by the customer within 180 days. A retail launderer or dry cleaner is not responsible or liable for an article, garment, or piece of clothing disposed of pursuant to this section.

(2) A retail launderer or dry cleaner subject to this section shall post a notice describing the provisions of this section in a conspicuous place on the premises of the retail launderer or dry cleaner. The notice must be substantially the same as the following language: "As provided in section 70-9-601, MCA, an article, garment, or piece of clothing accepted for cleaning, laundering, repairing, or other service by a launderer or dry cleaner must be claimed within 180 days after the date the item was received for service. If an article is not claimed within 180 days, the item may be disposed of by the launderer or dry cleaner."

(3) For any item that is disposed of as provided in this section, the retail launderer or dry cleaner shall maintain copies of all service tickets or other records showing the date the item was received and the date and manner of disposition. The records must be maintained for 1 year following disposal.

(4) Any balance in excess of the charges for cleaning, laundering, repairing, or other service arising from the sale of an item unclaimed by the owner must be paid to the general fund of the county in which the sale took place.

History: En. Sec. 1, Ch. 17, L. 1995.

Part 7
Foreign Capital Depositories
(Repealed)

70-9-701. Repealed. Sec. 23, Ch. 163, L. 2005.

History: En. Sec. 64, Ch. 382, L. 1997.

Part 8
Uniform Unclaimed Property Act

70-9-801. Short title. This part may be cited as the "Uniform Unclaimed Property Act".

History: En. Sec. 1, Ch. 124, L. 1997.

70-9-802. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Gift certificate" has the meaning provided in 30-14-102.

(7) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

(8) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(9) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material;

gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(10) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

(11) (a) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser.

(b) The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(12) "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(13) "Payroll card" means a record that evidences a payroll card account as defined in Regulation E, 12 CFR, part 1005, as of April 19, 2023.

(14) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(15) "Personal information" means:

(a) information that identifies or reasonably can be used to identify an individual, such as a first and last name in combination with the individual's:

(i) social security number or other government-issued number or identifier;

(ii) date of birth;

(iii) home or physical address;

(iv) electronic mail address or other online contact information or internet provider address;

(v) financial account number or credit or debit card number;

(vi) biometric data, health or medical data, or insurance information; or

(vii) passwords or other credentials that permit access to an online account or other account; and

(b) personally identifiable financial or insurance information, including nonpublic personal information defined by applicable federal law.

(16) (a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business or, except as provided in subsection (16)(b), by a government, governmental subdivision, agency, or instrumentality and all income or increments from the property. The term includes property that is referred to as or evidenced by:

(i) money, virtual currency, check, draft, deposit, interest, dividend, or payroll card;

(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) bond, debenture, note, or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(b) The term does not include:

(i) property that is held, issued, or owed by a local government entity, as defined in 2-7-501;

(ii) property held in state and local government sponsored retirement plans governed by Title 19;

(iii) property held in a plan as described in section 529A of the Internal Revenue Code, 26 U.S.C. 529A, as amended.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

(18) "Security" means:

(a) a security as defined in 30-8-112;

(b) a security entitlement as defined in 30-8-112, including a customer security account held by a registered broker-dealer, to the extent the financial assets held in the security account are not:

(i) registered on the books of the issuer in the name of the person for which the broker-dealer holds the assets;

(ii) payable to the order of the person; or

(iii) specifically indorsed to the person; or

(c) an equity interest in a business association not included in subsection (18)(a) or (18)(b).

(19) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

(20) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

(21) (a) "Virtual currency" means a digital representation of value used as a medium of exchange, unit of account, or store of value that does not have legal tender status recognized by the United States.

(b) The term does not include:

(i) the software or protocols governing the transfer of the digital representation of value;

(ii) game-related digital content; or

(iii) a loyalty card.

(22) "Worthless security" means a security whose cost of liquidation and delivery to the administrator would exceed the value of the security on the date a report is due under this part.

History: En. Sec. 2, Ch. 124, L. 1997; amd. Sec. 1, Ch. 480, L. 2003; amd. Sec. 2, Ch. 331, L. 2007; amd. Sec. 1, Ch. 588, L. 2023; amd. Sec. 1, Ch. 87, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 87, L. 2025. Amendment effective October 1, 2025.

70-9-803. Presumptions of abandonment. (1) Property is presumed abandoned if it is unclaimed by the apparent owner measured by the later of the latest indication of interest by the apparent owner in the property or during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

(d) a payroll card, or a demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured upon its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal;

(e) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(f) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value. A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal year sold no more than $200,000 in gift certificates, which amount must be adjusted by November of each year by the inflation factor. The amount considered abandoned for a person who sells more than the amount that triggers presumption of abandonment is the value of gift certificates greater than that trigger.

(g) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable on proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(h) property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

(i) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

(j) property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

(k) wages or other compensation for personal services, 1 year after the compensation becomes payable;

(l) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

(m) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(n) a patronage refund owed to a member of a rural electric, natural gas, or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date;

(o) an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date;

(p) a security, as provided in 70-9-830; and

(q) all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(4) An indication of an apparent owner's interest in property includes:

(a) a record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(b) an oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(c) presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business association;

(d) activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(e) a deposit in or withdrawal from an account at a financial organization, including an automatic deposit or withdrawal previously authorized by the apparent owner other than an automatic reinvestment of dividends or interest;

(f) subject to subsection (7), payment of a premium on an insurance policy;

(g) any other action by the apparent owner that reasonably demonstrates to the holder that the apparent owner knows that the property exists.

(5) An action by an agent or other representative of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.

(6) A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property.

(7) If the insured dies or the insured or beneficiary of an insurance policy otherwise becomes entitled to the proceeds before depletion of the cash surrender value of the policy by operation of an automatic premium loan provision or other nonforfeiture provision contained in the policy, the operation does not prevent the policy from maturing or terminating.

(8) The presumption provided in subsection (1) does not apply to:

(a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; or

(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located.

(9) As used in this section, "inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2015.

History: **En. Sec. 3, Ch. 124, L. 1997; amd. Sec. 33, Ch. 268, L. 1997; amd. Sec. 3, Ch. 331, L. 2007; amd. Sec. 16, Ch. 317, L. 2019; amd. Sec. 10, Ch. 17, L. 2021; amd. Sec. 59, Ch. 503, L. 2021; amd. Sec. 2, Ch. 588, L. 2023; amd. Sec. 2, Ch. 87, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 87, L. 2025. Amendment effective October 1, 2025.

70-9-804. Contents of safe deposit box or other safekeeping depository. Tangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law are presumed abandoned if the property remains unclaimed by the owner for more than 5 years after expiration of the lease or rental period on the box or other depository.

History: **En. Sec. 4, Ch. 124, L. 1997.**

70-9-805. Rules for taking custody. Except as otherwise provided in this part or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) the last-known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state;

(3) the records of the holder do not reflect the last-known address of the apparent owner and it is established that:

(a) the last-known address of the person entitled to the property is in this state; or

(b) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property;

(4) the last-known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(5) the last-known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(6) the transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last-known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order purchased in this state or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

History: **En. Sec. 5, Ch. 124, L. 1997.**

70-9-806. Dormancy charge. A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

History: **En. Sec. 6, Ch. 124, L. 1997.**

70-9-807. Burden of proof as to property evidenced by record of check or draft. A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder that is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

History: **En. Sec. 7, Ch. 124, L. 1997.**

70-9-808. Report of abandoned property. (1) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(2) The report must be verified and must contain:

(a) a description of the property;

(b) except with respect to a traveler's check or money order, the name, if known, and last-known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of $50 or more;

(c) an aggregated amount of items valued under $50 each;

(d) in the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;

(e) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator and any amounts owing to the holder;

(f) the date, if any, on which the property became payable, demandable, or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(g) other information that the administrator by rule prescribes as necessary for the administration of this part, including personal information as defined in 70-9-802 about the apparent owner or the apparent owner's property to the extent not otherwise prohibited by federal law.

(3) If a holder of property presumed abandoned is a successor to another person that previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(4) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(5) The holder of property that is presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this part if:

(a) the holder has in its records an address for the apparent owner that the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by a statute of limitations; and

(c) the value of the property is $50 or more.

(6) (a) If an apparent owner has consented to receive electronic mail delivery from the holder, the holder shall send the notice described in this subsection (6) by either first-class United States mail to the apparent owner's last-known mailing address or by electronic mail, unless the holder believes that the apparent owner's electronic mail address is invalid.

(b) Notice under this subsection (6) must contain a heading that reads substantially as follows: Notice. The State of Montana requires us to notify you that your property may be transferred to the custody of the Unclaimed Property Program of the Montana Department of Revenue if you do not contact us within 30 days of this notice.

(c) The notice must additionally:

(i) identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice;

(ii) state that the property will be turned over to the administrator;

(iii) state that after the property is turned over to the administrator an apparent owner who seeks return of the property must file a claim with the administrator;

(iv) state that property that is not legal tender of the United States may be sold by the administrator; and

(v) provide instructions that the apparent owner shall follow to prevent the holder from reporting and paying or delivering the property to the administrator.

(7) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(8) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (5).

History: **En. Sec. 8, Ch. 124, L. 1997; amd. Sec. 3, Ch. 588, L. 2023; amd. Sec. 3, Ch. 87, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 87, L. 2025. Amendment effective October 1, 2025.

70-9-809. Payment or delivery of abandoned property. (1) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by 70-9-808, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed; however, if the property is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until 60 days after filing the report required by 70-9-808.

(2) If the property reported to the administrator is a security or security entitlement under Title 30, chapter 8, the administrator is an appropriate person to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30, chapter 8.

(3) If the property reported to the administrator is a virtual currency, the holder shall liquidate the virtual currency within 30 days of filing the report and remit the proceeds in United States currency to the administrator. The holder may not sell a virtual currency for less than the price prevailing on an established virtual currency exchange at the time of the sale.

The holder may sell a virtual currency not listed on an established virtual currency exchange by any commercially reasonable method. Prior to selling a virtual currency, the holder shall send written notice to the apparent owner not less than 60 days before the sale that the virtual currency will be liquidated.

(4) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with 70-9-811.

History: **En. Sec. 9, Ch. 124, L. 1997; amd. Sec. 4, Ch. 588, L. 2023.**

70-9-810. Notice and publication of lists of abandoned property. (1) The administrator shall publish every 3 months in at least one newspaper of general circulation in each county in this state in which a newspaper is published an advertisement of property held by the administrator that:

(a) directs the public to the administrator's unclaimed property website provided in subsection (2);

(b) includes a telephone number and electronic mail address to contact the administrator to inquire about or claim property; and

(c) includes a statement that a person may access the internet by a computer to search for unclaimed property and a computer may be available as a service to the public at a local public library.

(2) The administrator shall maintain an unclaimed property website that can be accessed and is easily searchable by the public. The website must contain:

(a) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(b) the last-known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(c) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(d) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

History: **En. Sec. 10, Ch. 124, L. 1997; amd. Sec. 5, Ch. 588, L. 2023.**

70-9-811. Custody by state — recovery by holder — defense of holder. (1) In this section, payment or delivery is made in "good faith" if:

(a) payment or delivery was made in a reasonable attempt to comply with this part;

(b) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(c) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(2) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder that pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(3) A holder that has paid money to the administrator pursuant to this part may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person that reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under 70-9-819.

(4) A holder that has delivered property other than money to the administrator pursuant to this part may reclaim the property if it is still in the possession of the administrator, without

paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(5) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(6) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(7) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

History: En. Sec. 11, Ch. 124, L. 1997.

70-9-812. Public sale of abandoned property. (1) Except as otherwise provided in this section, the administrator, within 3 years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state, which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least 3 weeks before sale, on the unclaimed property website maintained by the administrator.

(2) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of 3 years after their delivery to the administrator, a person making a claim under this part before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this part after the expiration of the 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.

(3) A purchaser of property at a sale conducted by the administrator pursuant to this part takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

History: En. Sec. 12, Ch. 124, L. 1997; amd. Sec. 6, Ch. 588, L. 2023.

70-9-813. Deposit of funds. (1) Except as otherwise provided by this section, the administrator shall promptly deposit in the general fund of this state all funds received under this part, including the proceeds from the sale of abandoned property under 70-9-812. The administrator shall retain in a separate trust fund at least $100,000 from which the administrator shall pay claims allowed. The administrator shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the property and the name and last-known address of each insured person or annuitant and beneficiary and, with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(2) Before making a deposit to the credit of the general fund, the administrator may deduct:

(a) expenses of sale of abandoned property;

(b) costs of mailing and publication in connection with abandoned property;

(c) reasonable service charges; and

(d) expenses incurred in examining records of holders of property and in collecting the property from those holders.

History: En. Sec. 13, Ch. 124, L. 1997.

70-9-814. Claim of another state to recover property. (1) After property has been paid or delivered to the administrator under this part, another state may recover the property if:

(a) the property was paid or delivered to the custody of this state because the records of the holder did not reflect a last-known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state, and under the laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

(b) the property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(c) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last-known location of the owner within the borders of another state, and under the laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

(d) the property was subjected to custody by this state under 70-9-805(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(e) the property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this state under 70-9-805(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(2) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (1).

(3) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

History: En. Sec. 14, Ch. 124, L. 1997.

70-9-815. Filing claim with administrator — handling of claims by administrator — exception. (1) Except as provided in subsection (5), a person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(2) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under 70-9-816.

(3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest, or other increment to which the claimant is entitled under 70-9-812.

(4) A holder that pays the owner for property that has been delivered to the state and that, if claimed from the administrator by the owner, would be subject to an increment under 70-9-812 may recover from the administrator the amount of the increment.

(5) The administrator may waive the requirement in subsection (1) and may pay or deliver property directly to a person if:

(a) the person receiving the payment or property is shown to be the apparent owner included on a report filed under this part;

(b) the administrator reasonably believes the person is entitled to receive the payment or property and has validated the identity and address of the person receiving the payment or property; and

(c) the property has a value of $1,000 or less.

(6) If the administrator waives the requirement in subsection (1) and pays or delivers property directly to a person under subsection (5), the administrator shall document and keep record:

(a) of the proof of ownership as provided in subsection (5)(a);

(b) of the proof of identity as provided in subsection (5)(b); and

(c) that the property was returned to the owner.

History: En. Sec. 15, Ch. 124, L. 1997; amd. Sec. 1, Ch. 195, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 195, L. 2025. Amendment effective April 17, 2025.

70-9-816. Action to establish claim. A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the district court, naming the administrator as a defendant. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees.

History: En. Sec. 16, Ch. 124, L. 1997.

70-9-817. Election to take payment or delivery. (1) The administrator may decline to receive property reported under this part that the administrator considers to have a value less than the expenses of notice and sale.

(2) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property that is delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under this part.

History: En. Sec. 17, Ch. 124, L. 1997.

70-9-818. Destruction or disposition of property having no substantial commercial value — immunity from liability. If the administrator determines after investigation that property delivered under this part has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section except for intentional misconduct or malfeasance.

History: En. Sec. 18, Ch. 124, L. 1997.

70-9-819. Periods of limitation. (1) The expiration, before or after July 1, 1997, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this part.

(2) An action or proceeding may not be maintained by the administrator to enforce this part in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

History: En. Sec. 19, Ch. 124, L. 1997.

70-9-820. Requests for reports, examination of records, and confidentiality. (1) The administrator may require a person that has not filed a report or a person that the administrator believes has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this part, describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(2) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this part. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this part. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(3) The administrator, at reasonable times, may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial organization that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (2) to both the association or organization and the agent at least 90 days before the examination.

(4) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination and personal information obtained from a holder's reports, except for the personal information published pursuant to 70-9-810, are confidential and are not public records, but the documents and papers may be:

(a) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this part;

(b) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(c) produced pursuant to subpoena or court order; or

(d) disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection (4) if the other state is bound to keep the documents and papers confidential.

(5) The administrator may only disclose confidential personal information to an apparent owner of unclaimed property, or the apparent owner's personal representative, power of attorney, attorney-in-fact, or agent, or a beneficiary of the apparent owner or the unclaimed property.

(6) If an examination of the records of a person results in the disclosure of property reportable under this part, the administrator may assess the cost of the examination against the holder at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (3) may be assessed only against the business association or financial organization.

(7) If, after July 1, 1997, a holder does not maintain the records required by 70-9-821 and the records of the holder available for the periods subject to this part are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

History: En. Sec. 20, Ch. 124, L. 1997; amd. Sec. 7, Ch. 588, L. 2023.

70-9-821. Retention of records. (1) Except as otherwise provided in subsection (2), a holder required to file a report under 70-9-808 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report unless a shorter period is provided by rule of the administrator.

(2) A business association or financial organization that sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for 3 years after the holder files the report.

History: En. Sec. 21, Ch. 124, L. 1997.

70-9-822. Enforcement. The administrator may maintain an action in this or another state to enforce this part. The court may award reasonable attorney fees to the prevailing party.

History: En. Sec. 22, Ch. 124, L. 1997.

70-9-823. Interstate agreements and cooperation — joint and reciprocal actions with other states. (1) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in 70-9-820. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(2) The administrator may join with another state to seek enforcement of this part against any person that is or may be holding property reportable under this part.

(3) At the request of another state, the attorney general of this state may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(4) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. With the approval of the attorney general of this state, the administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney fees may be paid from money received under this part. The administrator may agree to pay expenses and attorney fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this part.

History: **En. Sec. 23, Ch. 124, L. 1997.**

70-9-824. Interest and penalties. (1) A holder that fails to report, pay, or deliver property within the time prescribed by this part shall pay to the administrator interest at the annual rate of 12% on the property or value of the property from the date the property should have been reported, paid, or delivered.

(2) Except as otherwise provided in subsection (3), a holder that fails to report, pay, or deliver property within the time prescribed by this part, or fails to perform other duties imposed by this part, shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $100 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of $2,500.

(3) A holder that willfully fails to report, pay, or deliver property within the time prescribed by this part, or willfully fails to perform other duties imposed by this part, shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $1,000 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported.

(4) A holder that makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $1,000 for each day from the date a report under this part was due, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported.

(5) The administrator for good cause may waive, in whole or in part, interest under subsection (1) and penalties under subsections (2) and (3) and shall waive penalties if the holder acted in good faith and without negligence.

History: **En. Sec. 24, Ch. 124, L. 1997.**

70-9-825. Agreement to locate property. (1) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

(2) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

(3) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(4) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney fees to an owner who prevails in the action.

(5) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

History: En. Sec. 25, Ch. 124, L. 1997.

70-9-826. Foreign transactions. This part does not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

History: En. Sec. 26, Ch. 124, L. 1997.

70-9-827. Transitional provisions. (1) An initial report filed under this part for property that was not required to be reported before July 1, 1997, but that is subject to this part must include all items of property that would have been presumed abandoned during the 10-year period next preceding July 1, 1997, as if this part had been in effect during that period.

(2) This part does not relieve a holder of a duty that arose before July 1, 2023, to report, pay, or deliver property. Except as otherwise provided in 70-9-819(2), a holder that did not comply with the law in effect before July 1, 2023, is subject to the applicable provisions for enforcement and penalties that then existed, which are continued in effect for the purpose of this section.

History: En. Sec. 27, Ch. 124, L. 1997; amd. Sec. 8, Ch. 588, L. 2023.

70-9-828. Rules. The administrator may adopt, pursuant to Title 2, chapter 4, rules necessary to carry out this part.

History: En. Sec. 28, Ch. 124, L. 1997.

70-9-829. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 29, Ch. 124, L. 1997.

70-9-830. When security presumed abandoned. (1) A security is presumed abandoned 3 years after:

(a) except as provided in subsection (1)(b), the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States postal service; or

(b) if the second communication is sent later than 30 days after the date the first communication is returned to the holder undelivered by the United States postal service, the date the first communication was returned to the holder undelivered by the United States postal service.

(2) If the holder does not send communications to the apparent owner of a security by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the security by sending the apparent owner an electronic mail communication not later than 2 years after the apparent owner's last indication of interest in the security. However, the holder shall promptly attempt to contact the apparent owner by first-class United States mail if:

(a) the holder does not have the information needed to send the apparent owner an electronic mail communication or the holder believes that the apparent owner's electronic mail address in the holder's records is invalid;

(b) the holder receives notification that the electronic mail communication was not received; or

(c) the apparent owner does not respond to the electronic mail communication within 30 days after the communication was sent.

(3) If first-class United States mail sent under subsection (2) is returned to the holder undelivered by the United States postal service, the security is presumed abandoned 3 years after the date the mail is returned.

History: **En. Sec. 9, Ch. 588, L. 2023.**

CHAPTERS 10 THROUGH 14
RESERVED

CHAPTER 15
DEFINITIONS AND KINDS OF ESTATES IN REAL PROPERTY

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Part 1
Real Property Defined Fixtures and Appurtenances

70-15-101. Real property defined. Real or immovable property consists of:

(1) land;

(2) that which is affixed to land;

(3) that which is incidental or appurtenant to land;

(4) that which is immovable by law.

History: **En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R.C.M. 1921; Cal. Civ. C. Sec. 658; Based on Field Civ. C. Sec. 163; re-en. Sec. 6667, R.C.M. 1935; R.C.M. 1947, 67-207.**

Cross-References

Real estate defined, 37-51-102.

70-15-102. Land defined. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

History: En. Sec. 1075, Civ. C. 1895; re-en. Sec. 4426, Rev. C. 1907; re-en. Sec. 6668, R.C.M. 1921; Cal. Civ. C. Sec. 659; Field Civ. C. Sec. 164; re-en. Sec. 6668, R.C.M. 1935; R.C.M. 1947, 67-208.

70-15-103. Fixture defined. A thing is deemed to be affixed to land when it is:

(1) attached to it by roots, as in the case of trees, vines, or shrubs;

(2) imbedded in it, as in the case of walls;

(3) permanently resting upon it, as in the case of buildings; or

(4) permanently attached to what is thus permanent as by means of cement, plaster, nails, bolts, or screws.

History: En. Sec. 1076, Civ. C. 1895; re-en. Sec. 4427, Rev. C. 1907; re-en. Sec. 6669, R.C.M. 1921; Cal. Civ. C. Sec. 660; Field Civ. C. Sec. 165; re-en. Sec. 6669, R.C.M. 1935; R.C.M. 1947, 67-209.

70-15-104. Fixtures attached to mines. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine.

History: En. Sec. 1077, Civ. C. 1895; re-en. Sec. 4428, Rev. C. 1907; re-en. Sec. 6670, R.C.M. 1921; Cal. Civ. C. Sec. 661; re-en. Sec. 6670, R.C.M. 1935; R.C.M. 1947, 67-210.

70-15-105. Incident or appurtenance defined. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way or watercourse or of a passage for light, air, or heat from or across the land of another.

History: En. Sec. 1078, Civ. C. 1895; re-en. Sec. 4429, Rev. C. 1907; re-en. Sec. 6671, R.C.M. 1921; Cal. Civ. C. Sec. 662; Field Civ. C. Sec. 166; re-en. Sec. 6671, R.C.M. 1935; R.C.M. 1947, 67-211.

Part 2
Classification of Interests in Real Property

Part Cross-References

Trust Code, Title 72, ch. 38.

70-15-201. Application of classifications. The names and classification of interests in real property have only such application to interests in personal property as is in this code expressly provided.

History: En. Sec. 1123, Civ. C. 1895; re-en. Sec. 4456, Rev. C. 1907; re-en. Sec. 6698, R.C.M. 1921; Cal. Civ. C. Sec. 702; Field Civ. C. Sec. 194; re-en. Sec. 6698, R.C.M. 1935; R.C.M. 1947, 67-328.

70-15-202. Enumeration of estates. Estates in real property, in respect to the duration of their enjoyment, are either:

(1) estates of inheritance or perpetual estates;

(2) estates for life;

(3) estates for years;

(4) estates from year to year, quarter to quarter, month to month, week to week, day to day, and for other indefinite and unascertained durations of enjoyment whatsoever, except estates or tenancies at will; or

(5) estates at will.

History: En. Sec. 1210, Civ. C. 1895; re-en. Sec. 4481, Rev. C. 1907; re-en. Sec. 6723, R.C.M. 1921; Cal. Civ. C. Sec. 761; Field Civ. C. Sec. 218; amd. Sec. 1, Ch. 48, L. 1931; re-en. Sec. 6723, R.C.M. 1935; R.C.M. 1947, 67-502.

Cross-References

Quieting title to real property, Title 70, ch. 28.

70-15-203. Fee simple. Every estate of inheritance is a fee, and such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

History: En. Sec. 1211, Civ. C. 1895; re-en. Sec. 4482, Rev. C. 1907; re-en. Sec. 6724, R.C.M. 1921; Cal. Civ. C. Sec. 762; Based on Field Civ. Sec. 219; re-en. Sec. 6724, R.C.M. 1935; R.C.M. 1947, 67-503.

70-15-204. Estates tail abolished — considered fee simple. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple and, if no valid remainder is limited thereon, is a fee simple absolute.

History: En. Sec. 1212, Civ. C. 1895; re-en. Sec. 4483, Rev. C. 1907; re-en. Sec. 6725, R.C.M. 1921; Cal. Civ. C. Sec. 763; Based on Field Civ. C. Sec. 220; re-en. Sec. 6725, R.C.M. 1935; R.C.M. 1947, 67-504.

70-15-205. Remainder limited upon fee tail valid — vesting. When a remainder in fee is limited upon any estate that would by the common law be adjudged a fee tail, the remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker without issue living at the time of the first taker's death.

History: En. Sec. 1213, Civ. C. 1895; re-en. Sec. 4484, Rev. C. 1907; re-en. Sec. 6726, R.C.M. 1921; Cal. Civ. C. Sec. 764; Based on Field Civ. C. Sec. 221; re-en. Sec. 6726, R.C.M. 1935; R.C.M. 1947, 67-505; amd. Sec. 2112, Ch. 56, L. 2009.

70-15-206. Freehold estates — chattels real — chattel interests. Estates of inheritance and for life are called estates of freehold; estates for years and estates embraced by the provisions of 70-15-202(4) are chattels real; and estates at will are chattel interests but are not liable as such to sale on execution.

History: En. Sec. 1214, Civ. C. 1895; re-en. Sec. 4485, Rev. C. 1907; re-en. Sec. 6727, R.C.M. 1921; Cal. Civ. C. Sec. 765; Field Civ. C. Sec. 222; amd. Sec. 1, Ch. 49, L. 1931; re-en. Sec. 6727, R.C.M. 1935; R.C.M. 1947, 67-506.

70-15-207. Estate for life of third person — freehold. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

History: En. Sec. 1215, Civ. C. 1895; re-en. Sec. 4486, Rev. C. 1907; re-en. Sec. 6728, R.C.M. 1921; Cal. Civ. C. Sec. 766; re-en. Sec. 6728, R.C.M. 1935; R.C.M. 1947, 67-507.

70-15-208. Term of years — suspension of absolute ownership. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

History: En. Sec. 1219, Civ. C. 1895; re-en. Sec. 4490, Rev. C. 1907; re-en. Sec. 6732, R.C.M. 1921; Cal. Civ. C. Sec. 770; re-en. Sec. 6732, R.C.M. 1935; R.C.M. 1947, 67-511.

Cross-References

Conditions and limitations of ownership, Title 70, ch. 1, part 4.

70-15-209. Future estate — right of possession at future day. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate or on the termination by lapse of time or otherwise of a precedent estate created at the same time.

History: En. Sec. 1216, Civ. C. 1895; re-en. Sec. 4487, Rev. C. 1907; re-en. Sec. 6729, R.C.M. 1921; Cal. Civ. C. Sec. 767; Field Civ. C. Sec. 224; re-en. Sec. 6729, R.C.M. 1935; R.C.M. 1947, 67-508.

Cross-References

Future interest — to what entitles owner, 70-1-317.

70-15-210. Reversion. A reversion is the residue of an estate left by operation of law in the grantor or the grantor's successors or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

History: En. Sec. 1217, Civ. C. 1895; re-en. Sec. 4488, Rev. C. 1907; re-en. Sec. 6730, R.C.M. 1921; Cal. Civ. C. Sec. 768; Field Civ. C. Sec. 225; re-en. Sec. 6730, R.C.M. 1935; R.C.M. 1947, 67-509; amd. Sec. 2113, Ch. 56, L. 2009.

70-15-211. Remainder. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder and may be created and transferred by that name.

History: En. Sec. 1218, Civ. C. 1895; re-en. Sec. 4489, Rev. C. 1907; re-en. Sec. 6731, R.C.M. 1921; Cal. Civ. C. Sec. 769; Field Civ. C. Sec. 226; re-en. Sec. 6731, R.C.M. 1935; R.C.M. 1947, 67-510.

70-15-212. Future and contingent estates — how created. Subject to the rules of parts 1, 3, and 4 of chapter 1, parts 1 and 2 of this chapter, and part 1 of chapter 17:

(1) a freehold estate, as well as a chattel real, may be created to commence at a future day;

(2) an estate for life may be created in a term of years and a remainder limited thereon;

(3) a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and

(4) a fee may be limited on a fee upon a contingency which, if it should occur, must happen within the period prescribed in this code.

History: En. Sec. 1222, Civ. C. 1895; re-en. Sec. 4493, Rev. C. 1907; re-en. Sec. 6735, R.C.M. 1921; Cal. Civ. C. Sec. 773; Field Civ. C. Sec. 230; re-en. Sec. 6735, R.C.M. 1935; R.C.M. 1947, 67-514.

70-15-213. Remainder upon a contingency. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate, and every such remainder is to be deemed a conditional limitation.

History: En. Sec. 1227, Civ. C. 1895; re-en. Sec. 4498, Rev. C. 1907; re-en. Sec. 6740, R.C.M. 1921; Cal. Civ. C. Sec. 778; Field Civ. C. Sec. 236; re-en. Sec. 6740, R.C.M. 1935; R.C.M. 1947, 67-519.

70-15-214. Remainder not upon a contingency — when to take effect. When a remainder of an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker or the expiration by lapse of time of such term of years.

History: En. Sec. 1229, Civ. C. 1895; re-en. Sec. 4500, Rev. C. 1907; re-en. Sec. 6742, R.C.M. 1921; Cal. Civ. C. Sec. 780; Field Civ. C. Sec. 238; re-en. Sec. 6742, R.C.M. 1935; R.C.M. 1947, 67-521.

70-15-215. Remainder to heirs of tenant for life — effect of. When a remainder is limited to the heirs or heirs of the body of a person to whom a life estate in the same property is given, the persons who on the termination of the life estate are the successors or heirs of the body of the owner for life are entitled to take by virtue of the remainder so limited to them and not as mere successors of the owner for life.

History: En. Sec. 1228, Civ. C. 1895; re-en. Sec. 4499, Rev. C. 1907; re-en. Sec. 6741, R.C.M. 1921; Cal. Civ. C. Sec. 779; Field Civ. C. Sec. 237; re-en. Sec. 6741, R.C.M. 1935; R.C.M. 1947, 67-520.

70-15-216. When vesting of future estate not prevented by power of appointment. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

History: En. Sec. 1230, Civ. C. 1895; re-en. Sec. 4501, Rev. C. 1907; re-en. Sec. 6743, R.C.M. 1921; Cal. Civ. C. Sec. 781; Field Civ. C. Sec. 239; re-en. Sec. 6743, R.C.M. 1935; R.C.M. 1947, 67-522.

Part 3
Powers

70-15-301. Power defined. A "power", as the term is used in this part, is an authority to do some act in relation to real property or to the creation or revocation of an estate in or a charge on the real property that the owner granting or reserving the power might personally perform for any purpose.

History: En. Sec. 1330, Civ. C. 1895; re-en. Sec. 4551, Rev. C. 1907; re-en. Sec. 6798, R.C.M. 1921; Field Civ. C. Sec. 302; re-en. Sec. 6798, R.C.M. 1935; R.C.M. 1947, 67-901; amd. Sec. 2114, Ch. 56, L. 2009.

70-15-302. Who may not execute power. A power cannot be executed by any person not capable of disposing of real property.

History: En. Sec. 1331, Civ. C. 1895; re-en. Sec. 4552, Rev. C. 1907; re-en. Sec. 6799, R.C.M. 1921; Field Civ. C. Sec. 319; re-en. Sec. 6799, R.C.M. 1935; R.C.M. 1947, 67-902.

70-15-303. Married persons — execution. A married person may execute a power during marriage without the concurrence of the spouse unless otherwise prescribed by the terms of the power.

History: (1)En. Sec. 1332, Civ. C. 1895; re-en. Sec. 4553, Rev. C. 1907; re-en. Sec. 6800, R.C.M. 1921; Field Civ. C. Sec. 320; re-en. Sec. 6800, R.C.M. 1935; amd. Sec. 31, Ch. 535, L. 1975; Sec. 67-903, R.C.M. 1947; (2)En. Sec. 1333, Civ. C. 1895; re-en. Sec. 4554, Rev. C. 1907; re-en. Sec. 6801, R.C.M. 1921; Based on Field Civ. C. Sec. 321; re-en. Sec. 6801, R.C.M. 1935; amd. Sec. 32, Ch. 535, L. 1975; Sec. 67-904, R.C.M. 1947; R.C.M. 1947, 67-903, 67-904; amd. Sec. 2115, Ch. 56, L. 2009.

70-15-304. Power — how executed. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner.

History: En. Sec. 1334, Civ. C. 1895; re-en. Sec. 4555, Rev. C. 1907; re-en. Sec. 6802, R.C.M. 1921; Field Civ. C. Sec. 322; re-en. Sec. 6802, R.C.M. 1935; R.C.M. 1947, 67-905.

Cross-References

What contracts must be in writing, 28-2-903.

CHAPTER 16
RIGHTS AND OBLIGATIONS INCIDENTAL TO OWNERSHIP IN REAL PROPERTY

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Parts 5 and 6 reserved

Part 7 — Montana Mold Disclosure Act

70-16-701. Short title.
70-16-702. Definitions.
70-16-703. Mold disclosure statement on real estate documents — disclosure of prior testing — immunity from liability.

Chapter Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Part 1
General Provisions

70-16-101. Rights of owner in fee — above and below surface. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

History: En. Sec. 1290, Civ. C. 1895; re-en. Sec. 4528, Rev. C. 1907; re-en. Sec. 6770, R.C.M. 1921; Cal. Civ. C. Sec. 829; Field Civ. C. Sec. 266; re-en. Sec. 6770, R.C.M. 1935; R.C.M. 1947, 67-711.

70-16-102. Rights of life tenant. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that the owner of the life estate may not do an act to the injury of the inheritance.

History: En. Sec. 1270, Civ. C. 1895; re-en. Sec. 4518, Rev. C. 1907; re-en. Sec. 6760, R.C.M. 1921; Cal. C. Sec. 818; Field Civ. C. Sec. 257; re-en. Sec. 6760, R.C.M. 1935; R.C.M. 1947, 67-701; amd. Sec. 2116, Ch. 56, L. 2009.

70-16-103. Duties of life tenant. The owner of a life estate must keep the buildings and fences in repair from ordinary waste and must pay the taxes and other annual charges and a just proportion of extraordinary assessments benefiting the whole inheritance.

History: En. Sec. 1300, Civ. C. 1895; re-en. Sec. 4534, Rev. C. 1907; re-en. Sec. 6776, R.C.M. 1921; Cal. Civ. C. Sec. 840; Field Civ. C. Sec. 272; re-en. Sec. 6776, R.C.M. 1935; R.C.M. 1947, 67-801.

70-16-104. Rights of tenant for years or at will. (1) A tenant for years or at will, unless the tenant is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of the tenancy. A tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of the tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to the tenant by the agreement or instrument by which the tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by Title 70, chapter 24.

History: (1)En. Sec. 1271, Civ. C. 1895; re-en. Sec. 4519, Rev. C. 1907; re-en. Sec. 6761, R.C.M. 1921; Cal. Civ. C. Sec. 819; Based on Field Civ. C. Sec. 258; re-en. Sec. 6761, R.C.M. 1935; Sec. 67-702, R.C.M. 1947; (2)En. Sec. 1272, Civ. C. 1895; re-en. Sec. 4520, Rev. C. 1907; re-en. Sec. 6762, R.C.M. 1921; Cal. Civ. C. Sec. 820; Field Civ. C. Sec. 259; re-en. Sec. 6762, R.C.M. 1935; Sec. 67-703, R.C.M. 1947; R.C.M. 1947, 67-702, 67-703; (3)En. Sec. 5, Ch. 115, L. 1979; amd. Sec. 2117, Ch. 56, L. 2009.

Cross-References

The Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.
Landlord and tenant — supplementary provisions, Title 70, ch. 26.
Forcible entry and detainer — unlawful detainer, Title 70, ch. 27.

70-16-105. Remedy of person having remainder or reversion. A person having an estate in fee in remainder or reversion may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years and although, after its commission, the person's estate is transferred and the person does not have an interest in the property at the commencement of the action.

History: En. Sec. 1278, Civ. C. 1895; re-en. Sec. 4526, Rev. C. 1907; re-en. Sec. 6768, R.C.M. 1921; Cal. Civ. C. Sec. 826; Field Civ. C. Sec. 265; re-en. Sec. 6768, R.C.M. 1935; R.C.M. 1947, 67-709; amd. Sec. 2118, Ch. 56, L. 2009.

70-16-106. Action for waste — treble damages. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commits waste of the property, any person aggrieved by the waste may bring an action against that person. The judgment in the action may be for treble damages.

History: En. Sec. 229, p. 91, Bannack Stat.; re-en. Sec. 250, p. 187, L. 1867; re-en. Sec. 299, p. 93, Cod. Stat. 1871; re-en. Sec. 350, p. 137, L. 1877; re-en. Sec. 350, 1st Div. Rev. Stat. 1879; re-en. Sec. 362, 1st Div. Comp. Stat. 1887; re-en. Sec. 1301, C. Civ. Proc. 1895; re-en. Sec. 6866, Rev. C. 1907; re-en. Sec. 9475, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 732; re-en. Sec. 9475, R.C.M. 1935; R.C.M. 1947, 93-6102; amd. Sec. 2119, Ch. 56, L. 2009.

Cross-References

Statutes of limitation, Title 27, ch. 2, part 2.
Action by or against joint tenants or tenants in common, 70-1-310.
Abuse of property held jointly or in common — mining property, 70-19-202.

70-16-107. Trespass for taking timber. A person who cuts down or carries off any wood, underwood, tree, or timber or girdles or otherwise injures any tree or timber on the land of another person, on the street or highway in front of any person's house or town or city lot, on cultivated grounds or on the commons or public grounds of any city or town, or on the street or highway of any city or town, without lawful authority, is liable to the owner of the land or to the city or town for:

(1) the amount of the damages incurred if the trespass was casual and inadvertent or committed under the belief that the land belonged to the trespasser or if the wood was taken by the authority of state or local government officers or employees for the purposes of a highway; or

(2) treble the amount of damages incurred if the trespass was willful, wanton, or malicious.

History: (1)En. Sec. 230, p. 91, Bannack Stat.; re-en. Sec. 251, p. 187, L. 1867; re-en. Sec. 300, p. 93, Cod. Stat. 1871; re-en. Sec. 351, p. 137, L. 1877; re-en. Sec. 351, 1st Div. Rev. Stat. 1879; re-en. Sec. 363, 1st Div. Comp. Stat. 1887; re-en. Sec. 1302, C. Civ. Proc. 1895; re-en. Sec. 6867, Rev. C. 1907; re-en. Sec. 9476, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 733; re-en. Sec. 9476, R.C.M. 1935; Sec. 93-6103, R.C.M. 1947; (2)En. Sec. 231, p. 91, Bannack Stat.; re-en. Sec. 252, p. 187, L. 1867; re-en. Sec. 301, p. 93, Cod. Stat. 1871; re-en. Sec. 352, p. 137, L. 1877; re-en. Sec. 352, 1st Div. Rev. Stat. 1879; re-en. Sec. 364, 1st Div. Comp. Stat. 1887; re-en. Sec. 1303, C. Civ. Proc. 1895; re-en. Sec. 6868, Rev. C. 1907; re-en. Sec. 9477, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 734; re-en. Sec. 9477, R.C.M. 1935; Sec. 93-6104, R.C.M. 1947; R.C.M. 1947, 93-6103, 93-6104; amd. Sec. 1, Ch. 239, L. 2005.

70-16-108. Repealed. Sec. 2, Ch. 239, L. 2005.

History: En. Sec. 4352, Civ. C. 1895; re-en. Sec. 6078, Rev. C. 1907; re-en. Sec. 8696, R.C.M. 1921; Cal. Civ. C. Sec. 3346; Field. Civ. C. Sec. 1871; re-en. Sec. 8696, R.C.M. 1935; R.C.M. 1947, 17-503.

70-16-109. Summary proceedings for possession — where provisions found. Summary proceedings for obtaining possession of real property forcibly entered or forcibly and unlawfully detained are provided for in chapter 27.

History: En. Sec. 1243, Civ. C. 1895; re-en. Sec. 4505, Rev. C. 1907; re-en. Sec. 6747, R.C.M. 1921; Cal. Civ. C. Sec. 792; re-en. Sec. 6747, R.C.M. 1935; R.C.M. 1947, 67-526.

Cross-References

Wrongful occupation of real property, 27-1-318.

70-16-110. Requirements for entry on real property by agent of homeowners' association — exceptions. (1) (a) A homeowners' association must receive permission from an owner of real property before an agent of the homeowners' association may enter the property.

(b) When seeking permission for an agent of the homeowners' association to enter the property, the homeowners' association shall:

(i) seek to establish a date and time to enter the property that is convenient to the owner; and

(ii) specify what part of the property the agent of the homeowners' association seeks to access.

(2) An owner of real property may require that the owner or the owner's agent be present when an agent of the homeowners' association enters the property.

(3) This section does not affect any implied license an agent of a homeowners' association has as a member of the public to access the areas of real property generally open to the public, such as sidewalks, front pathways, or the front door of a house.

(4) As used in this section, "homeowners' association" means an association of all the owners of real property within a geographic area defined by physical boundaries that:

(a) is formally governed by a declaration of covenants, bylaws, or both;

(b) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(c) may enact or enforce rules concerning the operation of the community or subdivision.

(5) This section does not apply to condominiums where there are common elements that must be accessed by entering the unit and for which the declaration of covenants or bylaws set forth the terms of accessing the unit.

(6) This section does not apply to easements of record that specifically benefit the homeowners' association.

History: En. Sec. 1, Ch. 452, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

70-16-111. Entry to property by professional land surveyor or other qualified person — trespass exception — notice — liability. (1) Subject to the conditions and restrictions of this section, the provisions of 45-6-203 do not apply to a person who is licensed or registered under Title 37, chapter 67, part 3, as a professional land surveyor, as defined in 37-67-101, or to a person acting under the direct supervision of a professional land surveyor as an employee, agent, or representative.

(2) A person qualified under subsection (1) may enter public or private land to investigate and use boundary evidence and perform boundary surveys if the notice requirements of subsection (3) are met.

(3) (a) At least 15 days before the desired date of entry to land, a professional land surveyor shall give notice to the owner of the land, by certified mail, return receipt requested. The notice must contain the following information:

(i) the identity of the person for whom the survey is being performed;

(ii) the purpose for which the survey is being performed;

(iii) the name of the employer of the professional land surveyor;

(iv) the identity of the professional land surveyor;

(v) the dates, times, and location of entry to the land, including the estimated number of entries;

(vi) a timetable for completion of the survey, including an estimated completion date; and

(vii) a statement requesting the landowner to provide the surveyor with the name of each person who occupies the land as a tenant or lessee.

(b) A landowner may waive the notice requirement of this subsection (3), either orally or in writing.

(c) This section does not impose liability upon a landowner who fails or refuses to provide the requested entry.

(4) (a) If a landowner does not acknowledge receipt of the notice within 15 days, a person qualified under subsection (1) may enter the land pursuant to the specifications given in the notice.

(b) If a landowner acknowledges receipt of the notice within 15 days, the landowner may modify the access provisions of the notice, as long as the modifications do not unreasonably restrict completion of the survey.

(5) Persons qualified under subsection (1) who enter land pursuant to this section shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification upon request.

(6) Vehicular access to perform surveys is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(7) Approval of the landowner is required for the clearing of trees, brush, or other vegetation.

(8) A landowner may request a person qualified under subsection (1) who enters land pursuant to this section to wash any vehicle prior to entry in order to remove mud and debris that might carry noxious weeds or noxious weed seeds. The person may request that the landowner be present at the time of any entry to inspect the vehicle under the terms of this subsection.

(9) Entry upon land for survey purposes by a person qualified under subsection (1) creates a rebuttable presumption that the landowner or lessee properly protected the person against personal injury or property damage while the person was on the land.

(10) As an act of good will and in order to keep the landowner informed, a professional land surveyor shall supply the landowner with information on located, established, or reestablished corners that lie on the land or that may affect the boundaries of the land. Upon request, the professional land surveyor shall provide the landowner with a copy of any relevant survey filed or recorded.

History: **En. Sec. 2, Ch. 604, L. 1993.**

Cross-References

Limitations on actions arising out of work on improvements to real property, 27-2-208.
Professional land surveyor defined, 37-67-101.
Criminal trespass to property, 45-6-203.
Surveying — actions arising from, 70-28-113.

Part 2

Adjoining Landowners and Boundaries — Fences

Part Cross-References

Fences, Title 81, ch. 4, part 1.

70-16-201. Owner of land bounded by water. Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

History: **En. Sec. 1291, Civ. C. 1895; re-en. Sec. 4529, Rev. C. 1907; re-en. Sec. 6771, R.C.M. 1921; Cal. Civ. C. Sec. 830; Based on Field Civ. C. Sec. 267; re-en. Sec. 6771, R.C.M. 1935; R.C.M. 1947, 67-712.**

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Recreational use of streams, Title 23, ch. 2, part 3.
Access to surface waters by public bridge or county road right-of-way, 23-2-312.
Public ways, 85-1-111.
Navigable waters, 85-1-112.

70-16-202. Owner of land bounded by road. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.

History: En. Sec. 1292, Civ. C. 1895; re-en. Sec. 4530, Rev. C. 1907; re-en. Sec. 6772, R.C.M. 1921; Cal. Civ. C. Sec. 831; Field Civ. C. Sec. 268; re-en. Sec. 6772, R.C.M. 1935; R.C.M. 1947, 67-713.

70-16-203. Adjoining owner's right to lateral and subjacent support — excavations. Each coterminous owner is entitled to the lateral and subjacent support that the owner's land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the adjoining land for the purposes of construction, on using ordinary care and skill and taking reasonable precautions to sustain the land of the other and giving previous reasonable notice to the other of the intention to make the excavations.

History: En. Sec. 1293, Civ. C. 1895; re-en. Sec. 4531, Rev. C. 1907; re-en. Sec. 6773, R.C.M. 1921; Cal. Civ. C. Sec. 832; Based on Field Civ. C. Sec. 269; re-en. Sec. 6773, R.C.M. 1935; R.C.M. 1947, 67-714; amd. Sec. 2120, Ch. 56, L. 2009.

70-16-204. Trees on or near boundary. (1) Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

(2) Trees whose trunks stand wholly upon the land of one owner belong exclusively to that landowner, although their roots grow into the land of another.

History: En. Secs. 1294, 1295, Civ. C. 1895; re-en. Secs. 4532, 4533, Rev. C. 1907; re-en. Secs. 6774, 6775, R.C.M. 1921; Cal. Civ. C. Secs. 833, 834; Field Civ. C. Secs. 270, 271; re-en. Secs. 6774, 6775, R.C.M. 1935; R.C.M. 1947, 67-715, 67-716; amd. Sec. 2121, Ch. 56, L. 2009.

70-16-205. Monuments and fences — mutual obligation of adjoining owners. (1) Coterminous owners are mutually bound equally to maintain:

(a) the boundaries and monuments between them;

(b) the fences between them, unless one of them chooses to let that owner's land lie without fencing, in which case if that owner afterwards encloses it, that owner shall refund to the other owner a just proportion of the value, at that time, of any division fence made by the other owner. However, using land for grazing or pasturage of any kind must be considered a usage of the land, and the land may not be considered as lying idle under the provisions of this section.

(2) Except as provided by prescription, custom, or agreement between coterminous owners, each coterminous owner shall maintain all fencing to the right of the midpoint of the common boundary line as viewed from the owner's land. If the land of one owner is entirely surrounded by the land of another, each owner shall maintain all fencing to the right, as viewed from the owner's land, of the northeastern corner of the surrounded land or, if there is more than one northeastern corner, then from the northernmost northeastern corner to a point midway around the surrounded land. If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time.

History: En. Sec. 1301, Civ. C. 1895; re-en. Sec. 4535, Rev. C. 1907; amd. Sec. 1, Ch. 132, L. 1917; re-en. Sec. 6777, R.C.M. 1921; Cal. Civ. C. Sec. 841; Based on Field Civ. C. Sec. 273; re-en. Sec. 6777, R.C.M. 1935; R.C.M. 1947, 67-802; amd. Sec. 1, Ch. 402, L. 1989; amd. Sec. 2122, Ch. 56, L. 2009.

70-16-206. Partition fences required — adjoining lands previously enclosed. The occupants of adjoining lands enclosed with fences must build and maintain partition fences between their own and the next adjoining enclosure in equal shares so long as both continue to enclose the same, and such partition fence must be kept in good repair throughout the year unless the occupants otherwise mutually agree.

History: En. Sec. 1114, 5th Div. Comp. Stat. 1887; amd. Sec. 3253, Pol. C. 1895; re-en. Sec. 2085, Rev. C. 1907; re-en. Sec. 6778, R.C.M. 1921; re-en. Sec. 6778, R.C.M. 1935; R.C.M. 1947, 67-803.

70-16-207. Occupant of land adjoining enclosure of another — when required to share expense of partition fence. If any occupant of land adjoining the enclosure of another encloses the land, upon the enclosure of the other person, the occupant shall within 3 months build the occupant's proportion of the partition fence or refund to the owner of the fence an equal proportion of the value, at that time, of any partition fence of the adjoining occupant.

History: En. Sec. 1115, 5th Div. Comp. Stat. 1887; re-en. Sec. 3254, Pol. C. 1895; re-en. Sec. 2086, Rev. C. 1907; re-en. Sec. 6779, R.C.M. 1921; re-en. Sec. 6779, R.C.M. 1935; R.C.M. 1947, 67-804; amd. Sec. 2123, Ch. 56, L. 2009.

70-16-208. Partition fence when common occupancy ceases. Whenever any lands belonging to different persons in severalty have been enclosed and occupied in common or without a partition fence between them and one of the occupants desires to occupy that occupant's part in severalty, the other occupant shall, within 6 months after being notified in writing, build and maintain the other occupant's proportion of the partition fence as may be necessary for that purpose, and in case of neglect or refusal so to do, the person giving the notice may build the fence at the expense of the person neglecting or refusing. The amount expended may be recovered in an action, together with all damages that person may sustain on account of the neglect or refusal.

History: En. Sec. 1116, 5th Div. Comp. Stat. 1887; re-en. Sec. 3255, Pol. C. 1895; re-en. Sec. 2087, Rev. C. 1907; re-en. Sec. 6780, R.C.M. 1921; re-en. Sec. 6780, R.C.M. 1935; R.C.M. 1947, 67-805; amd. Sec. 2124, Ch. 56, L. 2009.

70-16-209. Repair or rebuilding of partition fences. If a person neglects or refuses to repair or rebuild any partition fence that by law the person ought to build or maintain, the occupant of the adjoining land may, after giving 60 days' notice that a new fence should be erected or 5 days' notice in writing that the repairing of the fence is necessary, build or repair the fence at the expense of the party neglecting or refusing. The amount expended may be recovered from the neglecting or refusing party after receipt of the notice, and the neglecting or refusing party is liable to the party injured for all damages sustained by the neglect or refusal.

History: En. Sec. 1118, 5th Div. Comp. Stat. 1887; re-en. Sec. 3257, Pol. C. 1895; re-en. Sec. 2089, Rev. C. 1907; re-en. Sec. 6782, R.C.M. 1921; re-en. Sec. 6782, R.C.M. 1935; R.C.M. 1947, 67-807; amd. Sec. 2125, Ch. 56, L. 2009.

70-16-210. Removal of partition fence. If the occupants of adjoining lands build their respective portions of a partition fence and either of them at any time desires to let the land occupied by that person lie open, that person may, after having given to the occupants of the adjoining land at least 6 months' notice of the intention so to do, remove that person's proportion of the partition fence unless the adjoining occupant pays or tenders to that person the value of the fence. If the fence is removed without notice or after payment or tender of the value, the person removing the fence is liable to the person injured for all damages the injured person may sustain.

History: En. Sec. 1117, 5th Div. Comp. Stat. 1887; re-en. Sec. 3256, Pol. C. 1895; re-en. Sec. 2088, Rev. C. 1907; re-en. Sec. 6781, R.C.M. 1921; re-en. Sec. 6781, R.C.M. 1935; R.C.M. 1947, 67-806; amd. Sec. 2126, Ch. 56, L. 2009.

Part 3
Gratuitous Permittee for Recreation

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Restriction on liability of landowner and supervisor, 23-2-321.
Smith River Management Act, Title 23, ch. 2, part 4.
Liability, Title 27, ch. 1, part 7.

70-16-301. Recreational purposes defined. "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions. The term includes the private, noncommercial flying of aircraft in relation to private land.

History: En. Sec. 2, Ch. 138, L. 1965; R.C.M. 1947, 67-809; amd. Sec. 1, Ch. 531, L. 1987; amd. Sec. 8, Ch. 264, L. 1993; amd. Sec. 1, Ch. 303, L. 1995; amd. Sec. 1, Ch. 353, L. 2007.

Cross-References

Recreational use defined, 23-2-301.

70-16-302. *(Temporary)* **Restriction on liability of landowner — definitions.** (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802 or other funds provided under 77-1-815.

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.

(c) "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(d) "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(3) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct. *(Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)*

70-16-302. *(Effective on occurrence of contingency)* **Restriction on liability of landowner — definitions.** (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means either improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.

(c) "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(d) "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(3) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67-808; amd. Sec. 3, Ch. 209, L. 1987; amd. Sec. 8, Ch. 440, L. 1987; amd. Sec. 2, Ch. 303, L. 1995; amd. Sec. 2, Ch. 596, L. 2003; amd. Sec. 2, Ch. 353, L. 2007.

Compiler's Comments

Contingent Voidness: Section 8, Ch. 596, L. 2003, provided: "(1) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not sign an agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land by [the effective date of this act] [effective March 1, 2004], then [this act] is void. The department of natural resources and conservation shall notify the code commissioner of the failure to reach an agreement. [An agreement was entered into effective December 8, 2003.]

(2) (a) If an agreement between the department of natural resources and conservation and the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land is terminated prior to the expiration date of the agreement, then [this act] is void upon termination. The department of natural resources and conservation shall notify the code commissioner of the termination.

(b) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not enter into a renewal agreement prior to the expiration date of an agreement, then [this act] is void on the expiration date of the agreement. The department of natural resources and conservation shall notify the code commissioner of the expiration.

(3) If a court of competent jurisdiction determines that the agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust lands is invalid, then [this act] is void on the date the court's judgment is final. The department of natural resources and conservation shall notify the code commissioner of the entry of the judgment.

(4) If the department of natural resources and conservation and the department of fish, wildlife, and parks receive written notice from the regional director of the United States fish and wildlife service that [this act] will result in a loss of federal fish and wildlife funds, then [this act] is void. The department of natural resources and conservation shall notify the code commissioner that the department has received a notice and the date upon which the notice was received."

Cross-References

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-655.

Part 4
Right of Reentry

70-16-401. Reentry — when and how to be made. Whenever the right of reentry is given to the grantor or lessor in any grant or lease or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in chapter 27.

History: En. Sec. 1242, Civ. C. 1895; re-en. Sec. 4504, Rev. C. 1907; re-en. Sec. 6746, R.C.M. 1921; Cal. Civ. C. Sec. 791; Based on Field Civ. C. Sec. 243; re-en. Sec. 6746, R.C.M. 1935; R.C.M. 1947, 67-525.

Cross-References

Forcible entry and detainer — unlawful detainer, Title 70, ch. 27.

70-16-402. Action for possession under right of reentry — notice not required. An action for the possession of real property leased or granted with a right of reentry may be maintained at any time in the district court, after the right to reenter has accrued, without the notice prescribed in 70-16-401.

History: En. Sec. 1244, Civ. C. 1895; re-en. Sec. 4506, Rev. C. 1907; re-en. Sec. 6748, R.C.M. 1921; Cal. Civ. C. Sec. 793; Field Civ. C. Sec. 244; re-en. Sec. 6748, R.C.M. 1935; R.C.M. 1947, 67-527.

Parts 5 and 6 reserved

Part 7
Montana Mold Disclosure Act

70-16-701. Short title. This part may be cited as the "Montana Mold Disclosure Act".

History: En. Sec. 1, Ch. 584, L. 2003.

70-16-702. Definitions. As used in this part, the following definitions apply:

(1) "Inhabitable real property" means any real property that includes a building affixed to land. The building must be designed to be primarily occupied by humans, either as a dwelling or as a place of business.

(2) "Mold" means any mold, fungus, mildew, or spores.

(3) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

History: En. Sec. 2, Ch. 584, L. 2003.

70-16-703. Mold disclosure statement on real estate documents — disclosure of prior testing — immunity from liability. (1) A mold disclosure statement may be provided on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase and sale, rental, or lease of inhabitable real property. The seller, landlord, seller's agent, buyer's agent, or property manager may provide the following disclosure statement to the buyer or tenant, and the buyer or tenant shall acknowledge receipt of this disclosure statement by signing a copy of the disclosure statement:

"MOLD DISCLOSURE: There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The seller, landlord, seller's agent, buyer's agent, or property manager cannot and does not represent or warrant the absence of mold. It is the buyer's or tenant's obligation to determine whether a mold problem is present. To do so, the buyer or tenant should hire a qualified inspector and make any contract to purchase, rent, or lease contingent upon the results of that inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent, or lease."

(2) Whenever a seller or landlord or an agent of either has knowledge that a building has mold present, the seller, landlord, or agent of either shall, prior to or upon entry into a contract for the purchase, rent, or lease, disclose to the buyer or renter the presence of the mold. Whenever a seller or landlord knows that a building has been tested for mold, the seller or landlord, prior to or upon entry into a contract for the purchase, rent, or lease of that building, shall advise the buyer or tenant that testing has occurred and shall provide to the buyer or tenant a copy of the results of that test, if available to the seller or landlord, and evidence of any subsequent mitigation or treatment. A prospective buyer or tenant who contracts for the testing may receive the results of that testing and shall provide a copy of the results of that test, if available, to the seller or landlord. The furnishing of test results and evidence of mitigation or treatment is not to be construed as a promise, warranty, or representation of any sort by the seller, landlord, seller's agent, buyer's agent, or property manager that the test results are accurate or that the mitigation or treatment is effective. This section does not create a contingency on the purchase of the property or any right to rescind a contract for purchase unless the contingency or right to rescind is an express term of the applicable contract.

(3) A seller, landlord, seller's agent, buyer's agent, or property manager who provides the disclosure in subsection (1) and complies with subsection (2) is not liable in any action based on the presence of or propensity for mold in the building.

History: **En. Sec. 3, Ch. 584, L. 2003.**

CHAPTER 17

SERVITUDES, EASEMENTS, AND COVENANTS RUNNING WITH THE LAND

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70-17-406. Wind energy agreement — contents and requirements — notarization.
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Part 9 — Restrictions Pertaining to Homeowners' Associations

70-17-901. Homeowners' association restrictions — real property rights.

Part 1
Servitudes — Easements

Part Cross-References

Implied covenants — free from encumbrance, 70-20-304.
Easements to pass with property, 70-20-308.
Trust Code, Title 72, ch. 38.

70-17-101. Servitudes attached to land. The following land burdens or servitudes upon land may be attached to other land as incidents or appurtenances and are then called easements:

(1) the right of pasture;

(2) the right of fishing;

(3) the right of taking game;

(4) the right-of-way;

(5) the right of taking water, wood, minerals, and other things;

(6) the right of transacting business upon land;

(7) the right of conducting lawful sports upon land;

(8) the right of receiving air, light, or heat from or over or discharging the same upon or over land;

(9) the right of receiving water from or discharging the same upon land;

(10) the right of flooding land;

(11) the right of having water flow without diminution or disturbance of any kind;

(12) the right of using a wall as a party wall;

(13) the right of receiving more than natural support from adjacent land or things affixed thereto;

(14) the right of having the whole of a division fence maintained by a coterminous owner;
(15) the right of having public conveyances stopped or of stopping the same on land;
(16) the right of a seat in church;
(17) the right of burial;
(18) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land;
(19) the right of receiving sunlight or wind for recognized nonfossil forms of energy generation; and
(20) the right of using land adjacent to a firearms shooting range as a range safety zone.

History: En. Sec. 1250, Civ. C. 1895; re-en. Sec. 4507, Rev. C. 1907; re-en. Sec. 6749, R.C.M. 1921; Cal. Civ. C. Sec. 801; Field Civ. C. Sec. 245; re-en. Sec. 6749, R.C.M. 1935; amd. Sec. 16, Ch. 489, L. 1975; R.C.M. 1947, 67-601; amd. Sec. 1, Ch. 209, L. 1983; amd. Sec. 1, Ch. 111, L. 1993.

Cross-References

Covenants running with land, Title 70, ch. 17, part 2.

70-17-102. Servitudes not attached to land. The following land burdens or servitudes upon land may be granted and held though not attached to land:
(1) the right of pasture and of fishing and taking game;
(2) the right of a seat in church;
(3) the right of burial;
(4) the right of taking rents and tolls;
(5) the right-of-way;
(6) the right of taking water, wood, minerals, or other things;
(7) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land.

History: En. Sec. 1251, Civ. C. 1895; re-en. Sec. 4508, Rev. C. 1907; re-en. Sec. 6750, R.C.M. 1921; Cal. Civ. C. Sec. 802; Based on Field Civ. C. Sec. 246; re-en. Sec. 6750, R.C.M. 1935; amd. Sec. 17, Ch. 489, L. 1975; R.C.M. 1947, 67-602.

70-17-103. Dominant and servient tenement. The land to which an easement is attached is called the dominant tenement. The land upon which a burden or servitude is held is called the servient tenement.

History: En. Sec. 1252, Civ. C. 1895; re-en. Sec. 4509, Rev. C. 1907; re-en. Sec. 6751, R.C.M. 1921; Cal. Civ. C. Sec. 803; Field Civ. C. Sec. 247; re-en. Sec. 6751, R.C.M. 1935; R.C.M. 1947, 67-603.

70-17-104. Who may grant servitude. A servitude can be created only by one who has a vested estate in the servient tenement.

History: En. Sec. 1253, Civ. C. 1895; re-en. Sec. 4510, Rev. C. 1907; re-en. Sec. 6752, R.C.M. 1921; Cal. Civ. C. Sec. 804; Field Civ. C. Sec. 248; re-en. Sec. 6752, R.C.M. 1935; R.C.M. 1947, 67-604.

70-17-105. Who may not hold servitude. A servitude thereon cannot be held by the owner of the servient tenement.

History: En. Sec. 1254, Civ. C. 1895; re-en. Sec. 4511, Rev. C. 1907; re-en. Sec. 6753, R.C.M. 1921; Cal. Civ. C. Sec. 805; Field Civ. C. Sec. 249; re-en. Sec. 6753, R.C.M. 1935; R.C.M. 1947, 67-605.

70-17-106. Extent of servitude. (1) Except as otherwise provided in 23-2-312, 23-2-322, and this section, the extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by which it was acquired.

(2) A servitude granted, either by the terms of the grant or by the nature of the enjoyment, to a local, state, or federal government body for administrative purposes does not create a right to use the servitude for any other purpose unless specifically provided for in writing in the grant.

(3) The holder of a written servitude may not use the servitude to grant additional rights and privileges to a successor or assignee unless the successor or assignee is specifically provided for in writing in the grant.

History: En. Sec. 1255, Civ. C. 1895; re-en. Sec. 4512, Rev. C. 1907; re-en. Sec. 6754, R.C.M. 1921; Cal. Civ. C. Sec. 806; Field Civ. C. Sec. 250; re-en. Sec. 6754, R.C.M. 1935; R.C.M. 1947, 67-606; amd. Sec. 2, Ch. 453, L. 2021.

70-17-107. Apportionment of burden upon partition of dominant tenement. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement but not in such a way as to increase the burden upon the servient tenement.

History: En. Sec. 1256, Civ. C. 1895; re-en. Sec. 4513, Rev. C. 1907; re-en. Sec. 6755, R.C.M. 1921; Cal. Civ. C. Sec. 807; Field Civ. C. Sec. 251; re-en. Sec. 6755, R.C.M. 1935; R.C.M. 1947, 67-607.

70-17-108. Rights of owner of future estate in dominant tenement. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements although such tenement is occupied by a tenant.

History: En. Sec. 1257, Civ. C. 1895; re-en. Sec. 4514, Rev. C. 1907; re-en. Sec. 6756, R.C.M. 1921; Cal. Civ. C. Sec. 808; Field Civ. C. Sec. 252; re-en. Sec. 6756, R.C.M. 1935; R.C.M. 1947, 67-608.

70-17-109. Who may bring action to enforce easement. The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

History: En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; R.C.M. 1947, 62-617.

70-17-110. Action by owner of servient tenement for possession. The owner in fee of a servient tenement may maintain an action for the possession of the land against any one unlawfully possessed thereof though a servitude exists thereon in favor of the public.

History: En. Sec. 1259, Civ. C. 1895; re-en. Sec. 4516, Rev. C. 1907; re-en. Sec. 6758, R.C.M. 1921; Cal. Civ. C. Sec. 810; Field Civ. C. Sec. 254; re-en. Sec. 6758, R.C.M. 1935; R.C.M. 1947, 67-610.

70-17-111. How servitude extinguished. (1) Except as provided in subsection (2), a servitude is extinguished:

(a) by the vesting of the right to the servitude and the right to the servient tenement in the same person;

(b) by the destruction of the servient tenement;

(c) by the performance of any act upon either tenement by the owner of the servitude or with the owner's assent that is incompatible with its nature or exercise; or

(d) when the servitude was acquired by enjoyment, by disuse of the servitude by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

(2) A conservation easement may not be extinguished by taking fee title to the land to which the conservation easement is attached.

History: En. Sec. 1260, Civ. C. 1895; re-en. Sec. 4517, Rev. C. 1907; re-en. Sec. 6759, R.C.M. 1921; Cal. Civ. C. Sec. 811; Field Civ. C. Sec. 255; re-en. Sec. 6759, R.C.M. 1935; R.C.M. 1947, 67-611; amd. Sec. 1, Ch. 352, L. 2007.

70-17-112. Interference with canal or ditch easements prohibited. (1) A person with a canal or ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch or to operate the appropriation works. A person retains this secondary easement if the canal or ditch is converted into a pipeline and the pipeline is conspicuously marked.

(2) A person may not encroach on or otherwise impair any easement for a canal or ditch used for irrigation or any other lawful domestic or commercial purpose, including carrying return water. A person may not encroach on or otherwise impair any easement for a canal or ditch under this subsection that has been converted into a pipeline.

(3) The provisions of subsection (2) do not apply if the holder of the canal, ditch, or pipeline easement consents in writing to the encroachment or impairment.

(4) Each canal or ditch easement obtained by prescription or conveyance is included within the scope of this section. Nothing in this section establishes a secondary easement where none existed prior to April 14, 1981. This section does not affect contracts or agreements concluded prior to April 14, 1981.

(5) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled to costs and reasonable attorney fees.

History: En. Sec. 1, Ch. 371, L. 1981; amd. Sec. 1, Ch. 180, L. 2013; amd. Sec. 1, Ch. 447, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 447, L. 2025. Amendment effective October 1, 2025.

Cross-References

Unlawful interference as nuisance, 27-30-101.

70-17-113. Prohibited easement. If an existing road or road easement provides access to a lot in a platted residential subdivision, the owner of a lot or parcel in a platted residential subdivision may not obtain a prescriptive easement for ingress or egress to the lot if the prescriptive easement crosses other lots or parcels in the platted residential subdivision.

History: En. Sec. 1, Ch. 304, L. 2021.

70-17-114. Easement signage. The owner of a servient tenement may place private property signage along the servitude boundary to ensure those persons or entities using the servitude understand the servitude boundary.

History: En. Sec. 1, Ch. 453, L. 2021.

70-17-115. State acquisition of land subject to prescriptive easement. Acquisition by the state of land subject to a prescriptive easement does not terminate the prescriptive easement.

History: En. Sec. 1, Ch. 329, L. 2023.

Part 2

Covenants Running With the Land

Part Cross-References

Breach of covenants in grants of estates in real property, 27-1-316.
Joint obligations and covenants to be taken as joint and several, 28-1-302.
What included in authority to sell real property, 28-10-422.
Usual common-law covenants required by such contracts — when, 30-11-109.
Form of covenants, 30-11-110.

70-17-201. Nature and effect. Certain covenants contained in grants of estates in real property are appurtenant to such estates and pass with them so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

History: En. Sec. 1983, Civ. C. 1895; re-en. Sec. 4914, Rev. C. 1907; re-en. Sec. 7416, R.C.M. 1921; Cal. Civ. C. Sec. 1460; Field Civ. C. Sec. 691; re-en. Sec. 7416, R.C.M. 1935; R.C.M. 1947, 58-304.

70-17-202. Covenants specified in this part as exclusive. The only covenants which run with the land are those specified in this part and those which are incidental thereto.

History: En. Sec. 1984, Civ. C. 1895; re-en. Sec. 4915, Rev. C. 1907; re-en. Sec. 7417, R.C.M. 1921; Cal. Civ. C. Sec. 1461; Field Civ. C. Sec. 692; re-en. Sec. 7417, R.C.M. 1935; R.C.M. 1947, 58-305.

Cross-References

Easements to run with land, 76-6-209.

70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522 and 70-17-212, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee;

(b) conservation easements pursuant to 76-6-209;

(c) a dedication of open space as provided in 76-3-509; and

(d) wind easements pursuant to Title 70, chapter 17, part 4.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned.

History: En. Secs. 1985, 1986, 1987, Civ. C. 1895; re-en. Secs. 4916, 4917, 4918, Rev. C. 1907; re-en. Secs. 7418, 7419, 7420, R.C.M. 1921; Cal. Civ. C. Secs. 1462, 1463, 1464; Field Civ. C. Secs. 693, 694, 695; re-en. Secs. 7418, 7419, 7420, R.C.M. 1935; R.C.M. 1947, 58-306, 58-307, 58-308; amd. Sec. 2, Ch. 352, L. 2007; amd. Sec. 3, Ch. 307, L. 2009; amd. Sec. 1, Ch. 137, L. 2011; amd. Sec. 9, Ch. 249, L. 2011; amd. Sec. 3, Ch. 259, L. 2011.

Cross-References

Easements to run with land, 76-6-209.

70-17-204. Who bound by covenant. Except as provided in 70-1-522, a covenant running with the land binds only those who acquire the whole estate of the covenantor in some part of the property.

History: En. Sec. 1988, Civ. C. 1895; re-en. Sec. 4919, Rev. C. 1907; re-en. Sec. 7421, R.C.M. 1921; Cal. Civ. C. Sec. 1465; Field Civ. C. Sec. 696; re-en. Sec. 7421, R.C.M. 1935; R.C.M. 1947, 58-309; amd. Sec. 4, Ch. 307, L. 2009.

70-17-205. Nonliability for prior or subsequent breach. A person, merely by reason of having acquired an estate subject to a covenant running with the land, is not liable for a breach of the covenant before the person acquired the estate or after the person has parted with the estate or ceased to enjoy its benefits.

History: En. Sec. 1989, Civ. C. 1895; re-en. Sec. 4920, Rev. C. 1907; re-en. Sec. 7422, R.C.M. 1921; Cal. Civ. C. Sec. 1466; Field Civ. C. Sec. 697; re-en. Sec. 7422, R.C.M. 1935; R.C.M. 1947, 58-310; amd. Sec. 2127, Ch. 56, L. 2009.

70-17-206. Apportionment of burdens and benefits. Except as provided in 70-1-522, if several persons holding by several titles are subject to the burden or entitled to the benefits of a covenant running with the land, the covenant must be apportioned among them according to the value of the property subject to it held by them respectively if the value can be ascertained and, if not, then according to their respective interests in point of quantity.

History: En. Sec. 1990, Civ. C. 1895; re-en. Sec. 4921, Rev. C. 1907; re-en. Sec. 7423, R.C.M. 1921; Cal. Civ. C. Sec. 1467; Field Civ. C. Sec. 698; re-en. Sec. 7423, R.C.M. 1935; R.C.M. 1947, 58-311; amd. Sec. 5, Ch. 307, L. 2009.

70-17-207 through 70-17-209 reserved.

70-17-210. Covenant enforcement and abandonment. (1) The following persons may initiate a legal action to enforce covenants, conditions, or restrictions:

(a) a party to an agreement containing real property covenants, conditions, or restrictions or the party's successors in interest;

(b) the owner of an interest in real property burdened or benefited by a covenant, condition, or restriction; or

(c) a homeowners' association or other governing body of a real property development subject to covenants, conditions, or restrictions.

(2) The owner of an interest in real property subject to a covenant, condition, or restriction may assert a defense that a covenant, condition, or restriction has been abandoned for purposes of enforcement by offering evidence that no enforcement action has been undertaken for the prescribed period in 27-2-202. Once a covenant, condition, or restriction is abandoned by a court order or agreed to have been abandoned by the approval of the appropriate association or governing body by recording a notice of abandonment or amendment in the office of the county clerk and recorder of the county where the property is situated, all persons are precluded from undertaking a different interpretation or enforcement action of the abandoned covenant, condition, or restriction against a similarly situated owner of an interest in real property subject to the abandoned covenant, condition, or restriction.

(3) (a) Except as provided in subsection (3)(b), an association or governing body of a real property development that has not met for a period of 15 years is prohibited from taking an enforcement action against the owner of an interest in real property subject to a covenant, condition, or restriction whose use of the property is substantially similar to the nature and scope of the use of other properties in the development.

(b) Covenants, conditions, and restrictions are still valid and enforceable under this subsection (3) if they are otherwise necessary:

(i) to comply with applicable federal, state, and local laws, ordinances, and regulations;

(ii) for an easement or right-of-way;

(iii) for the maintenance of infrastructure or improvements serving the real properties burdened or benefited by the covenants, conditions, or restrictions;

(iv) to comply with a court order or the approval provided by a government on the establishment of the covenants, conditions, and restrictions;

(v) for the installation, maintenance, or removal of utilities; or

(vi) to abate a nuisance.

(4) For the purposes of this section and as it pertains to a parcel owner's defense, "enforcement action" related to a covenant means that the covenant was equally and consistently enforced under whatever method an association uses to enforce covenants on all properties subject to the covenant over at least a 2-year period.

History: En. Sec. 1, Ch. 665, L. 2023 (revised May 3, 2024); amd. Sec. 1, Ch. 258, L. 2025; amd. Sec. 1, Ch. 423, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 258, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 423, L. 2025. Amendment effective May 5, 2025.

70-17-211. Findings — purpose. The legislature finds and declares that transfer fee covenants, as defined in 70-17-212, impair the marketability and transferability of real property by constituting an unreasonable restraint on alienation regardless of the duration of the covenants or the amount of the transfer fees. The purpose of 70-17-212 and this section is to prohibit transfer fee covenants from running with the title to real property or binding subsequent owners of the property under common law or equitable principles.

History: En. Sec. 1, Ch. 259, L. 2011.

70-17-212. Transfer fee covenants — void. (1) A transfer fee covenant or any lien that is recorded or filed to enforce a transfer fee under a transfer fee covenant does not run with the title to real property and is not binding upon or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in the real property as a covenant, an equitable servitude, or otherwise.

(2) For purposes of this section, the following definitions apply:

(a) "Transfer" has the meaning provided in 70-1-501.

(b) "Transfer fee" means a fee or charge payable upon the transfer of legal or equitable title to an interest in real property regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. For purposes of this section, a transfer fee does not include the following:

(i) consideration payable by the transferee to the transferor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the transferee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind the original transferee's successors in interest to the property;

(ii) a commission payable to a licensed real estate salesperson or broker for the transfer of real property pursuant to an agreement between the broker and the transferor or the transferee, including any subsequent additional commission for the transfer payable by the transferor or the transferee based upon any subsequent appreciation, development, or sale of the property;

(iii) interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage, deed of trust, trust indenture, or other security interest against real property, including but not limited to a fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or other security interest, fees, or charges payable to the lender;

(iv) consideration payable by a buyer under a contract for deed as a condition of allowing a buyer to acquire equitable title to the real property described in the contract for deed;

(v) any fee, charge, assessment, dues, contribution, or other amount payable to:

(A) an association of unit owners as defined in 70-23-102 or any association of homeowners, mobile home owners, townhouse owners, or other property owners created pursuant to a recorded declaration that has the power to require owners to pay the costs and expenses incurred in the performance of the association's obligations; or

(B) a nonprofit corporation as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3), 501(c)(4), or 528 of the Internal Revenue Code.

(c) "Transfer fee covenant" means a covenant or declaration recorded or filed against the title to real property that requires the payment of a transfer fee to the declarant or other person specified in the covenant or declaration or to the declarant's or other person's successors or assigns upon each subsequent transfer of a legal or equitable interest in the real property.

(3) This section does not apply to any easement granted pursuant to Title 77.
History: En. Sec. 2, Ch. 259, L. 2011.

70-17-213 through 70-17-215 reserved.

70-17-216. Home-based child care. For residential property subject to a covenant, providing child care in a family day-care home as defined in 52-2-703 or a group day-care home as defined in 52-2-703 is a residential use of property and is a residential purpose.
History: En. Sec. 1, Ch. 169, L. 2023.

Part 3
Solar Easements

Part Cross-References
Right of receiving sunlight or wind as servitude creating easement, 70-17-101.

70-17-301. Creation of solar easements. An easement obtained for the purpose of exposure of a solar energy device must be created in writing and is subject to the same conveyancing and instrument recording requirements as other easements on real property.
History: En. Sec. 1, Ch. 524, L. 1979.

70-17-302. Content of solar easements. An instrument creating a solar easement must specify at least:

(1) the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement; and

(2) any terms or conditions under which the solar easement is granted or will be terminated.
History: En. Sec. 2, Ch. 524, L. 1979.

70-17-303. Repealed. Sec. 10, Ch. 249, L. 2011.
History: En. Sec. 2, Ch. 209, L. 1983.

Part 4
Wind Energy Easements

70-17-401. Short title. This part may be cited as the "Wind Energy Rights Act".
History: En. Sec. 1, Ch. 249, L. 2011.

70-17-402. Definitions. As used in this part, the following definitions apply:

(1) "Wind easement" means the right granted by the owner of real property to a wind energy developer guaranteeing the developer the right to use the real property legally described in a wind energy agreement and the wind resource located on and flowing over its surface to develop a wind energy project. A wind easement is an interest in real property.

(2) "Wind energy agreement" means any wind energy lease or license or any other written document entered into between the owner of the real property and the wind energy developer that contains the wind easement.

(3) "Wind energy developer" means the person that enters into a wind option agreement or wind energy agreement with the owner of the real property for the purpose of developing a wind energy project.

(4) "Wind energy right" means an interest in real property on and over which the wind resource is located and flows that is appurtenant to the real property.

(5) "Wind option agreement" means a written agreement in which the owner of real property grants a wind energy developer an exclusive right to obtain a wind easement through a wind energy agreement.
History: En. Sec. 2, Ch. 249, L. 2011.

70-17-403. Wind easement creation — terms. (1) A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property.

(2) The wind easement runs with the real property on and over which the wind resource flows.

(3) A wind easement terminates under the terms and conditions outlined in the wind easement.

History: **En. Sec. 3, Ch. 249, L. 2011.**

70-17-404. Severance of wind energy rights limited. (1) A wind energy right in the wind resource located on and flowing over the real property, including without limitation a royalty, if applicable, associated with the production of wind energy may not be severed from the real property even though a wind easement may be created pursuant to this part.

(2) Nothing in this section may be construed to prohibit or limit the right of a seller of the real property to retain any payments associated with an existing wind option agreement or wind energy agreement.

History: **En. Sec. 4, Ch. 249, L. 2011.**

70-17-405. Wind option agreements — contents and requirements — notarization. (1) A wind option agreement executed after April 21, 2011, must contain but is not limited to:

(a) the names and addresses of the parties to the wind option agreement;

(b) a legal description of the real property subject to the wind option agreement;

(c) the specified term beyond which the wind option agreement terminates and the real property is released from the obligations outlined in the wind option agreement;

(d) compensation for the owner of the real property on and over which the wind resource flows; and

(e) other terms and conditions agreed upon by the owner of the real property and the wind energy developer.

(2) A wind option agreement must be notarized.

(3) A wind option agreement may not exceed 20 years unless extended by agreement of the parties.

History: **En. Sec. 5, Ch. 249, L. 2011.**

70-17-406. Wind energy agreement — contents and requirements — notarization. (1) A wind energy agreement executed after April 21, 2011, must contain but is not limited to:

(a) the names and addresses of the parties to the wind energy agreement;

(b) a legal description of the real property subject to the wind easement and contained in the wind energy agreement;

(c) the obligations of the owner of the real property to ensure the undisturbed flow of wind on and over the real property, including restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the wind flow on and over the real property. Structures do not include equipment necessary to access minerals as they relate to the rights belonging to or the dominance of the mineral estate pursuant to 70-17-408.

(d) a specified term including the date on which the wind energy agreement or wind easement terminates;

(e) provisions to compensate the owner of the real property for the wind easement;

(f) provisions ensuring that the owner of the real property is not liable for any property tax associated with the wind energy project or other equipment related to the development of the wind energy project during the term of the wind energy agreement;

(g) provisions addressing property owner and wind energy developer liability during the construction and operation of the wind energy project and equipment;

(h) provisions obligating the wind energy developer to comply with federal, state, and local laws and regulations; and

(i) conditions upon which the wind energy agreement may be terminated prior to its termination date.

(2) A wind energy agreement must be notarized.

(3) If the terms of the wind energy agreement do not contain the requirements listed in subsection (1), a court may void the wind energy agreement or order any relief allowed by law.

History: **En. Sec. 6, Ch. 249, L. 2011.**

70-17-407. Wind energy agreements — grandfather clause. This part may not be construed to alter, amend, diminish, or invalidate wind energy rights acquired by contract, agreement, or lease prior to April 21, 2011.

History: **En. Sec. 7, Ch. 249, L. 2011.**

70-17-408. Preservation of property rights. This part may not be construed to:

(1) change or alter common law in accordance with 1-1-108 as it relates to the rights belonging to or the dominance of the mineral estate; or

(2) change or alter common law or statutory provisions regarding the ownership of surface or subsurface rights.

(3) Notwithstanding the provisions of this part or a wind energy agreement, the real property owner retains the right to grant easements or rights-of-way for all electric power lines to be located on the property.

History: En. Sec. 8, Ch. 249, L. 2011.

Parts 5 through 8 reserved

Part 9

Restrictions Pertaining to Homeowners' Associations

70-17-901. Homeowners' association restrictions — real property rights. (1) (a) A homeowners' association may not enter into, amend, or enforce a covenant, condition, or restriction in such a way that imposes more onerous restrictions on the types of use of a member's real property than those restrictions that existed when the member acquired the member's interest in the real property, unless the member who owns the affected real property expressly agrees in writing at the time of the adoption or amendment of the covenant, condition, or restriction.

(b) When a member claims the benefit of this subsection (1), the member shall request that the homeowners' association record, or allow recording of, the exception applicable to the member. Upon request by the member, the homeowners' association, the member, or a designee shall record the member's exception with the office of the county clerk and recorder of the county where the real property is situated. The member shall provide the homeowners' association with the date the real property was conveyed to the member and shall pay the recording fees for the document setting forth the exception.

(2) A successor-in-interest to a member's real property may not claim the benefit of subsection (1) to the extent that the homeowners' association entered into, amended, or enforced a covenant, condition, or restriction before the successor-in-interest purchased the real property, even if the covenant, condition, or restriction was not enforceable against the previous owner pursuant to subsection (1), unless the successor-in-interest is owned by or shares ownership with the previous member or unless the successor-in-interest is a lender that acquired the real property through foreclosure.

(3) This section does not apply to a covenant, condition, or restriction:

(a) that is not subject to enforcement by a homeowners' association; or

(b) that is required in order to comply with applicable federal, state, and local laws, ordinances, and regulations.

(4) Nothing in this section may be construed to prevent the enforcement of a covenant, condition, or restriction limiting the types of use of a member's real property as long as the covenant, condition, or restriction applied to the real property at the time the member acquired the member's interest in the real property.

(5) Nothing in this section invalidates existing covenants of a homeowners' association or creates a private right of action for actions or omissions occurring before May 9, 2019. However, after May 9, 2019, unless the member has consented as provided by subsection (1), a homeowners' association may not enforce a covenant, condition, or restriction in such a way that limits the types of use of a member's real property that were allowed when the member acquired the affected real property.

(6) As used in this section, the following definitions apply:

(a) "Homeowners' association" means:

(i) an association of all the owners of real property within a geographic area defined by physical boundaries which:

(A) is formally governed by a declaration of covenants, bylaws, or both;

(B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(C) may enact or enforce rules concerning the operation of the community or subdivision; or

(ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act.

(b) "Member" means a person that belongs to a homeowners' association and whose real property is subject to the jurisdiction of the homeowners' association.

(c) "Person" means one or more individuals or a legal or commercial entity.

(d) "Real property" has the meaning provided in 70-1-106, except that it is limited to real property governed by a homeowners' association.

(e) "Types of use" means the following lawful types of use of the real property:

(i) use for residential, agricultural, or commercial purposes, unless the use was impermissible according to the written or recorded restrictions;

(ii) the ability to rent the real property, including the land and structures on the real property, for any amount of time; and

(iii) the ability to otherwise develop the real property in accordance with applicable federal, state, and local laws, ordinances, and regulations, unless the ability was impermissible according to the written or recorded restrictions.

History: En. Sec. 1, Ch. 339, L. 2019.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

Restriction on covenants by association of unit owners, 70-23-507.

CHAPTER 18
REAL PROPERTY — ACCESSION FIXTURES AND WATERCOURSES

Part 1 — Fixtures

70-18-101. Fixture attached by other — accession by owner.
70-18-102. Removal of fixture by tenant.

Part 2 — Watercourses

70-18-201. Alluvion or accretion — increase of bank.
70-18-202. Repealed.
70-18-203. Island formed in navigable stream.
70-18-204. Island formed in nonnavigable stream.
70-18-205. Island formed by division of stream.
70-18-206. Sudden change in river or stream.

Part 1
Fixtures

70-18-101. Fixture attached by other — accession by owner. When a person affixes the person's property to the land of another without an agreement permitting the person to remove it, the thing affixed, except as provided in 70-18-102 and in the Uniform Commercial Code, belongs to the owner of the land unless the owner of the land chooses to require the person to remove it.

History: En. Sec. 1400, Civ. C. 1895; re-en. Sec. 4572, Rev. C. 1907; re-en. Sec. 6819, R.C.M. 1921; Cal. Civ. C. Sec. 1013; Based on Field Civ. C. Sec. 442; re-en. Sec. 6819, R.C.M. 1935; amd. Sec. 11-146, Ch. 264, L. 1963; R.C.M. 1947, 67-1301; amd. Sec. 2128, Ch. 56, L. 2009.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9A.

70-18-102. Removal of fixture by tenant. A tenant may remove from the demised premises, any time during the continuance of the tenant's term, anything affixed to the premises for purposes of trade, manufacture, ornament, or domestic use if the removal can be effected without injury to the premises unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

History: En. Sec. 1406, Civ. C. 1895; re-en. Sec. 4578, Rev. C. 1907; re-en. Sec. 6825, R.C.M. 1921; Cal. Civ. C. Sec. 1019; re-en. Sec. 6825, R.C.M. 1935; R.C.M. 1947, 67-1307; amd. Sec. 2129, Ch. 56, L. 2009.

Part 2
Watercourses

70-18-201. Alluvion or accretion — increase of bank. Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right-of-way over the bank.

History: **En. Sec. 1401, Civ. C. 1895; re-en. Sec. 4573, Rev. C. 1907; re-en. Sec. 6820, R.C.M. 1921; Cal. Civ. C. Sec. 1014; Field Civ. C. Sec. 443; re-en. Sec. 6820, R.C.M. 1935; R.C.M. 1947, 67-1302.**

70-18-202. Repealed. Sec. 3, Ch. 210, L. 2013.

History: **En. Sec. 1402, Civ. C. 1895; re-en. Sec. 4574, Rev. C. 1907; re-en. Sec. 6821, R.C.M. 1921; Cal. Civ. C. Sec. 1015; Field Civ. C. Sec. 444; re-en. Sec. 6821, R.C.M. 1935; R.C.M. 1947, 67-1303.**

70-18-203. Island formed in navigable stream. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state if there is no title or prescription to the contrary.

History: **En. Sec. 1403, Civ. C. 1895; re-en. Sec. 4575, Rev. C. 1907; re-en. Sec. 6822, R.C.M. 1921; Cal. Civ. C. Sec. 1016; Field Civ. C. Sec. 445; re-en. Sec. 6822, R.C.M. 1935; R.C.M. 1947, 67-1304.**

70-18-204. Island formed in nonnavigable stream. An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

History: **En. Sec. 1404, Civ. C. 1895; re-en. Sec. 4576, Rev. C. 1907; re-en. Sec. 6823, R.C.M. 1921; Cal. Civ. C. Sec. 1017; Field Civ. C. Sec. 446; re-en. Sec. 6823, R.C.M. 1935; R.C.M. 1947, 67-1305.**

70-18-205. Island formed by division of stream. If a stream navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.

History: **En. Sec. 1405, Civ. C. 1895; re-en. Sec. 4577, Rev. C. 1907; re-en. Sec. 6824, R.C.M. 1921; Cal. Civ. C. Sec. 1018; Field Civ. C. Sec. 447; re-en. Sec. 6824, R.C.M. 1935; R.C.M. 1947, 67-1306.**

70-18-206. Sudden change in river or stream. (1) If a river or stream abandons its channel and forms a new channel as a result of an avulsion and if the segment of the river or stream where the avulsion occurred has been adjudicated as navigable for title purposes by a court of competent jurisdiction, the land constituting the old channel belongs to the owner of the shores through which the old channel flowed or, if the shores are owned by different owners, to the owners on two sides, divided by an imaginary line drawn through the middle of the old river or stream channel.

(2) An affected owner seeking title to the land described in subsection (1) shall notify the department of natural resources and conservation and describe with particularity the event that resulted in the formation of the new channel. The affected owner shall also provide the department with a survey and any other information the department considers necessary.

(3) Upon receiving the information from the affected owner, the department shall verify the information and determine whether the new channel was created by an avulsion. If the department determines that the new channel was formed by an avulsion and the old channel is abandoned, the department shall recommend to the board of land commissioners that the state and the affected owner exchange quitclaim deeds for the properties affected by the avulsion.

(4) Upon approval by the board and the exchange of quitclaim deeds, the affected owner shall notify the department of revenue and the clerk and recorder of the county in which the affected property is located of the change in ownership and submit any information necessary to update the applicable ownership records.

(5) The land constituting the old channel is subject to property taxation payable by the affected owner from the date the quitclaim deeds are exchanged.

(6) The department of natural resources and conservation and the department of revenue may adopt rules to implement the provisions of this section.

(7) Ownership remains unchanged for land that constituted an island before the avulsion occurred and that is not wholly surrounded by water after the river abandoned the old channel.

(8) (a) If an avulsion occurs on a segment of a river or stream that has not been adjudicated as navigable for title purposes by a court of competent jurisdiction, an owner may seek to clarify title to the property affected by the avulsion.

(b) To seek title clarification, the affected owner shall submit the information to the department as required by subsection (2).

(c) If the department determines that the new channel was formed by an avulsion and that the old channel is abandoned, the department shall recommend to the board that the board issue a disclaimer of interest for the abandoned channel.

(d) Upon approval by the board, the affected owner may cite the disclaimer of interest to support an ownership claim in a quiet title action filed in a district court.

(e) Upon obtaining a quiet title judgment on the abandoned channel, the affected owner shall notify the department of revenue and the clerk and recorder of the county in which the affected property is located of the change in ownership and submit any information necessary to update the applicable ownership records.

(f) The land constituting the old channel is subject to property taxation payable by the affected owner from the date of the quiet title judgment.

(9) For purposes of this section:

(a) "abandoned bed" means a riverbed, streambed, or lakebed with no water over it at the low-water mark;

(b) "avulsion" means a sudden and perceptible change in the course of a river or stream that creates a new river or stream channel and that results in an abandoned bed along the course of the old channel.

History: En. Sec. 1, Ch. 210, L. 2013.

CHAPTER 19

REAL PROPERTY ACTIONS GENERALLY LIMITATIONS AND ADVERSE POSSESSION

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70-19-428. Construction defect disputes — damages.

Chapter Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Part 1
General Provisions

70-19-101. Action defined. The word "action", as used in parts 3 and 4, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

History: En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; R.C.M. 1947, 93-2720.

Cross-References

Actions and special proceedings defined, 27-1-102.

70-19-102. Action affecting title or possession — filing as constructive notice. (1) In an action affecting the title or right of possession of real property or in an action between husband and wife, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing the answer, when affirmative relief is claimed in the answer, or at any time afterward may file in the office of the clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the names of the parties and the object of the action or defense and a description of the property in that county affected by the action or defense.

(2) From the time of filing of the notice only is a purchaser or encumbrancer of the property affected considered to have constructive notice of the pendency of the action and only of its pendency against parties designated by their real names.

History: En. Sec. 27, p. 48, Bannack Stat.; re-en. Sec. 27, p. 139, L. 1867; re-en. Sec. 33, p. 33, Cod. Stat. 1871; amd. Sec. 70, p. 55, L. 1877; re-en. Sec. 70, 1st Div. Rev. Stat. 1879; re-en. Sec. 70, 1st Div. Comp. Stat. 1887; amd. Sec. 634, C. Civ. Proc. 1895; re-en. Sec. 6517, Rev. C. 1907; re-en. Sec. 9109, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 409; re-en. Sec. 9109, R.C.M. 1935; R.C.M. 1947, 93-3005; amd. Sec. 2130, Ch. 56, L. 2009.

Cross-References

Quieting title to real property — notice of action to be filed with Clerk and Recorder, 70-28-106.
Quieting title to real property — recording of notice by plaintiff and defendant, 70-28-213.
Partition of real property — notice of action to be filed with Clerk and Recorder — lis pendens, 70-29-109.

70-19-103. Action for recovery of possession not prejudiced by alienation. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

History: En. Sec. 241, p. 93, Bannack Stat.; re-en. Sec. 263, p. 188, L. 1867; re-en. Sec. 312, p. 95, L. 1871; re-en. Sec. 362, p. 139, L. 1877; re-en. Sec. 362, 1st Div. Rev. Stat. 1879; re-en. Sec. 374, 1st Div. Comp. Stat. 1887; re-en. Sec. 1320, C. Civ. Proc. 1895; re-en. Sec. 6880, Rev. C. 1907; re-en. Sec. 9498, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 747; re-en. Sec. 9498, R.C.M. 1935; R.C.M. 1947, 93-6222.

Part 2
Actions Relating to Mining Claims

Part Cross-References

Mining generally, Title 82, ch. 2.

70-19-201. Actions concerning mining claims governed by local rules. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this state or the United States, must govern the decision of the action.

History: En. Sec. 363, p. 139, L. 1877; re-en. Sec. 363, 1st Div. Rev. Stat. 1879; re-en. Sec. 375, 1st Div. Comp. Stat. 1887; amd. Sec. 1321, C. Civ. Proc. 1895; re-en. Sec. 6881, Rev. C. 1907; re-en. Sec. 9499, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 748; re-en. Sec. 9499, R.C.M. 1935; R.C.M. 1947, 93-6223.

70-19-202. Abuse of property held jointly or in common — action — mining property. If a person assumes and exercises exclusive ownership over or takes away, destroys, lessens in value, or otherwise injures or abuses any property held in joint tenancy or tenancy in common, the party aggrieved has action for the injury in the same manner as the aggrieved party would have if the joint tenancy or tenancy in common did not exist. However, this section does not prevent one cotenant or joint tenant or any number of cotenants or joint tenants acting together from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenants or joint tenants and enjoying all rights of occupancy of the property, without waste and, in the case of mining property, from mining the property in a minerlike manner and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses and subject to accounting to the nonjoining cotenant or joint tenant for the net profits of the mining operations. All liens for labor and materials incurred in the mining attach only to the undivided interest or interests of the working cotenants or joint tenants, but nothing in this section prevents or precludes the cotenant or joint tenant, not joining in the operation of the mining property, from receiving the cotenant's or joint tenant's proportionate share of all ore or ores on the dump upon payment or tendering payment of the actual cost of mining the property.

History: En. Sec. 2, p. 454, Bannack Stat.; re-en. Sec. 2, p. 504, Cod. Stat. 1871; re-en. Sec. 771, 5th Div. Rev. Stat. 1879; re-en. Sec. 1285, 5th Div. Comp. Stat. 1887; amd. Sec. 592, C. Civ. Proc. 1895; en. Sec. 1, p. 134, L. 1899; re-en. Sec. 6499, Rev. C. 1907; re-en. Sec. 9091, R.C.M. 1921; re-en. Sec. 9091, R.C.M. 1935; R.C.M. 1947, 93-2829; amd. Sec. 2131, Ch. 56, L. 2009.

70-19-203. Adverse claims under acts of congress. In an action brought to determine the respective rights of claimants to the possession of a mining claim or quartz lode under the provisions of the acts of congress of the United States, it is immaterial which party is in possession, and it is sufficient to confer jurisdiction upon the court if it appears from the pleadings that the application for a patent has been made and an adverse claim thereto filed and allowed in the proper land office, and the verdict or decision must find which party is entitled to the possession of the premises in dispute.

History: En. Sec. 1322, C. Civ. Proc. 1895; re-en. Sec. 6882, Rev. C. 1907; re-en. Sec. 9500, R.C.M. 1921; re-en. Sec. 9500, R.C.M. 1935; R.C.M. 1947, 93-6224.

Cross-References

Quieting title — cost if defendant disclaims, 70-28-112.

70-19-204. Order for inspection or survey. (1) Whenever a person has any right to or interest in any lead, lode, or mining claim that is in the possession of another person and it is necessary for the ascertainment, enforcement, or protection of that right or interest that an inspection, examination, or survey of the lead, mine, lode, or mining claim should be made or whenever any inspection, examination, or survey of the lead, mine, lode, or mining claim is necessary to protect, ascertain, or enforce the right or interest of any person in another lead, mine, lode, or mining claim and the person in possession of the other lead, mine, lode, or mining claim refuses for a period of 3 days after demand in writing to allow the inspection, examination, or survey to be had or made, the demanding party may present to the district court of the county in which the lead, mine, lode, or mining claim is located a petition under oath setting out the party's interest in the premises, describing the premises, setting out that the premises are in the possession of a party, naming the party, setting out the reason why the examination, inspection, or survey is necessary, and setting out the demand made on the person in possession to permit the examination, inspection, or survey and the person's refusal.

(2) The court or judge shall appoint a time and place for hearing a petition and shall order notice to be served upon the adverse party. The notice must be served at least 1 day before the day of hearing. At the hearing, either party may read affidavits or produce oral testimony, and if the judge is satisfied that the facts stated in the petition are true, the judge shall make an order for an inspection, examination, or survey of the lead, mine, lode, or mining claim in question in a manner, at a time, and by persons that are mentioned in the order. Upon the order the person shall have free access to the lead, mine, lode, or mining claim for the purpose of making the inspection, examination, or survey, and any interference with the person while acting under the order is contempt of court.

(3) If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order must await the result of the action, but all costs of making the examination or survey must be paid by the petitioner.

History: En. Sec. 8, p. 10, L. 1881; re-en. Sec. 376, 1st Div. Comp. Stat. 1887; re-en. Sec. 1317, C. Civ. Proc. 1895; re-en. Sec. 6876, Rev. C. 1907; re-en. Sec. 9494, R.C.M. 1921; re-en. Sec. 9494, R.C.M. 1935; R.C.M. 1947, 93-6218; amd. Sec. 2132, Ch. 56, L. 2009.

Part 3
Provisions and Limitations Relating to the State of Montana

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Sales of state lands, Title 77, ch. 2, part 3.

70-19-301. Application to lands conveyed by state. The provisions of parts 3 and 4 apply to all lands sold and conveyed before July 1, 1955, by the state of Montana for which a valid consideration was received by the state, provided that the state, at the time of the sale or conveyance, was not precluded by the constitution of Montana or by the terms of the grant of the lands by the United States from selling and disposing of the land. An occupant of a public way or other ground dedicated or appropriated by the state to public use and not subject to sale may not acquire by reason of the occupancy any title to the public way or ground.

History: En. Sec. 1, Ch. 195, L. 1955; R.C.M. 1947, 93-2516; amd. Sec. 2133, Ch. 56, L. 2009.

70-19-302. Statute of limitations for state actions concerning real property. The state will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the state to the same unless:

(1) such right or title shall have accrued within 10 years before any action or other proceeding for the same is commenced; or

(2) the state or those from whom it claims shall have received the rents and profits of such real property or of some part thereof within the space of 10 years.

History: En. Sec. 480, C. Civ. Proc. 1895; re-en. Sec. 6429, Rev. C. 1907; re-en. Sec. 9012, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 315; re-en. Sec. 9012, R.C.M. 1935; R.C.M. 1947, 93-2501.

70-19-303. Statute of limitations for actions by grantee — joinder of state. (1) An action may not be brought for or in respect to real property by any person claiming under letters patent or grants from this state unless the plaintiff or the plaintiff's ancestor, predecessor, or grantor was seized or possessed of the property in question within 10 years before the commencement of the action.

(2) In an action described in subsection (1), the state of Montana may be made a party defendant and has only the defenses that are available to other parties defendant to the action, provided that a judgment in any action may not include damages, attorney fees, or court costs against the state of Montana.

History: En. Sec. 481, C. Civ. Proc. 1895; re-en. Sec. 6430, Rev. C. 1907; re-en. Sec. 9013, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 316; re-en. Sec. 9013, R.C.M. 1935; amd. Sec. 1, Ch. 196, L. 1955; R.C.M. 1947, 93-2502; amd. Sec. 2134, Ch. 56, L. 2009.

70-19-304. Statute of limitations for action for recovery of property under void conveyance from state. When letters patent or grants of real property issued or made by the state are declared void by the determination of a competent court, an action for the recovery of the property conveyed may be brought, either by the state or by any subsequent patentee or grantee of the property or the patentee's or grantee's heirs or assigns only within 10 years after the determination.

History: En. Sec. 482, C. Civ. Proc. 1895; re-en. Sec. 6431, Rev. C. 1907; re-en. Sec. 9014, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 317; re-en. Sec. 9014, R.C.M. 1935; R.C.M. 1947, 93-2503; amd. Sec. 2135, Ch. 56, L. 2009.

Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.

70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership. A certificate of purchase or of location of any lands in this state issued or made in pursuance of any law of the United States or of this state is prima facie evidence that the holder or assignee of the certificate is the owner of the land described in the certificate, but this evidence may be overcome by proof that at the time of the location or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party or those under whom the adverse party claims or that the adverse party is holding the land for mining purposes.

History: **En. Sec. 3213, C. Civ. Proc. 1895; re-en. Sec. 7931, Rev. C. 1907; re-en. Sec. 10575, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1925; re-en. Sec. 10575, R.C.M. 1935; R.C.M. 1947, 93-1001-37; amd. Sec. 2136, Ch. 56, L. 2009.**

Part 4
Limitations and Adverse Possession

Part Cross-References

Wrongful occupation of real property, 27-1-318.

Actions arising from seizure or sale of property for taxes, 27-2-210.

70-19-401. Action for recovery — possession within 5 years required. An action for the recovery of real property or for the possession of real property may not be maintained unless it appears that the plaintiff or the plaintiff's ancestor, predecessor, or grantor was seized or possessed of the property in question within 5 years before the commencement of the action.

History: **En. Sec. 29, p. 45, L. 1877; re-en. Sec. 29, 1st Div. Rev. Stat. 1879; re-en. Sec. 29, 1st Div. Comp. Stat. 1887; amd Sec. 483, C. Civ. Proc. 1895; re-en. Sec. 6432, Rev. C. 1907; re-en. Sec. 9015, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 318; re-en. Sec. 9015, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1953; amd. Sec. 12, Ch. 263, L. 1975; R.C.M. 1947, 93-2504; amd. Sec. 2137, Ch. 56, L. 2009.**

70-19-402. Action or defense arising out of title to property or profits — possession within 5 years required. No cause of action or defense to an action, arising out of the title to real property or to rents or profits out of the same, can be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question within 5 years before the commencement of the act in respect to which such action is prosecuted or defense made.

History: **En. Sec. 30, p. 45, L. 1877; re-en. Sec. 30, 1st Div. Rev. Stat. 1879; re-en. Sec. 30, 1st Div. Comp. Stat. 1887; amd. Sec. 484, C. Civ. Proc. 1895; re-en. Sec. 6433, Rev. C. 1907; re-en. Sec. 9016, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 319; re-en. Sec. 9016, R.C.M. 1935; amd. Sec. 2, Ch. 224, L. 1953; R.C.M. 1947, 93-2505.**

70-19-403. When action on claim by entry must be commenced. No entry upon real estate is deemed sufficient or valid as a claim unless an action be commenced thereupon within 1 year after making such entry and within 5 years from the time when the right to make it descended or accrued.

History: **En. Sec. 3, p. 466, Bannack Stat.; re-en. Sec. 3, p. 515, Cod. Stat. 1871; amd. Sec. 31, p. 46, L. 1877; re-en. Sec. 31, 1st Div. Rev. Stat. 1879; re-en. Sec. 31, 1st Div. Comp. Stat. 1887; amd. Sec. 485, C. Civ. Proc. 1895; re-en. Sec. 6434, Rev. C. 1907; re-en. Sec. 9017, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 320; re-en. Sec. 9017, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1953; R.C.M. 1947, 93-2506.**

70-19-404. Presumption of possession within prescribed period — adverse possession as exception. In every action for the recovery of real property or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title unless it appear that the property has been held and possessed adversely to such legal title for 5 years before the commencement of the action.

History: **En. Sec. 4, p. 466, Bannack Stat.; re-en. Sec. 4, p. 515, Cod. Stat. 1871; amd. Sec. 32, p. 46, L. 1877; re-en. Sec. 32, 1st Div. Rev. Stat. 1879; re-en. Sec. 32, 1st Div. Comp. Stat. 1887; amd. Sec. 486, C. Civ. Proc. 1895; re-en. Sec. 6435, Rev. C. 1907; re-en. Sec. 9018, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 321; re-en. Sec. 9018, R.C.M. 1935; amd. Sec. 4, Ch. 224, L. 1953; R.C.M. 1947, 93-2507.**

70-19-405. Title by prescription. Except as provided in 23-2-322, occupancy for the period prescribed by this chapter as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

History: **En. Sec. 1391, Civ. C. 1895; re-en. Sec. 4571, Rev. C. 1907; re-en. Sec. 6818, R.C.M. 1921; Cal. Civ. C. Sec. 1007; Field Civ. C. Sec. 441; re-en. Sec. 6818, R.C.M. 1935; R.C.M. 1947, 67-1203; amd. Sec. 6, Ch. 556, L. 1985.**

Cross-References

Prescriptive easement not acquired by recreational use of surface waters, 23-2-322.

70-19-406. Simple occupancy. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession.

History: En. Sec. 1390, Civ. C. 1895; re-en. Sec. 4570, Rev. C. 1907; re-en. Sec. 6817, R.C.M. 1921; Cal. Civ. C. Sec. 1006; Field Civ. C. Sec. 440; re-en. Sec. 6817, R.C.M. 1935; R.C.M. 1947, 67-1202.

70-19-407. Occupancy under claim founded on instrument or judgment — when considered adverse. When it appears that the occupant or those under whom the occupant claims entered into the possession of the property under claim of title, exclusive of other right, founding the claim upon a written instrument as being a conveyance of the property in question or upon the decree or judgment of a competent court and that there has been a continued occupation and possession of the property included in the instrument, decree, or judgment or of some part of the property under the claim for 5 years, the property included is considered to have been held adversely, except that when the property consists of a tract divided into lots, the possession of one lot is not considered a possession of any other lot of the same tract.

History: En. Sec. 33, p. 46, L. 1877; re-en. Sec. 33, 1st Div. Rev. Stat. 1879; re-en. Sec. 33, 1st Div. Comp. Stat. 1887; amd. Sec. 487, C. Civ. Proc. 1895; re-en. Sec. 6436, Rev. C. 1907; re-en. Sec. 9019, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 322; re-en. Sec. 9019, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1953; R.C.M. 1947, 93-2508; amd. Sec. 2138, Ch. 56, L. 2009.

70-19-408. Claim founded on instrument or judgment — what considered possession and occupation. (1) For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

(a) where it has been usually cultivated or improved;
(b) where it has been protected by a substantial enclosure;
(c) where although not enclosed it has been used for the supply of fuel or of fencing timber, either for the purpose of husbandry or for pasturage or for the ordinary use of the occupant.

(2) Where a known farm or a single lot has been partly improved, the portion of such farm or lot that has been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

History: En. Sec. 5, p. 466, Bannack Stat.; re-en. Sec. 5, p. 516, Cod. Stat. 1871; amd. Sec. 34, p. 46, L. 1877; re-en. Sec. 34, 1st Div. Rev. Stat. 1879; re-en. Sec. 34, 1st Div. Comp. Stat. 1887; amd. Sec. 488, C. Civ. Proc. 1895; re-en. Sec. 6437, Rev. C. 1907; re-en. Sec. 9020, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 323; re-en. Sec. 9020, R.C.M. 1935; R.C.M. 1947, 93-2509.

70-19-409. Actual occupancy under claim of title not founded on instrument or judgment — adverse. Where it appears that there has been an actual continued occupation of land under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied and no other is deemed to have been held adversely.

History: En. Sec. 6, p. 467, Bannack Stat.; re-en. Sec. 6, p. 516, Cod. Stat. 1871; re-en. Sec. 35, p. 46, L. 1877; re-en. Sec. 35, 1st Div. Rev. Stat. 1879; re-en. Sec. 35, 1st Div. Comp. Stat. 1887; amd. Sec. 489, C. Civ. Proc. 1895; re-en. Sec. 6438, Rev. C. 1907; re-en. Sec. 9021, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 324; re-en. Sec. 9021, R.C.M. 1935; R.C.M. 1947, 93-2510.

70-19-410. Claim of title not founded on instrument or judgment — what considered occupation. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

(1) where it has been protected by a substantial enclosure;
(2) where it has been usually cultivated or improved.

History: En. Sec. 7, p. 467, Bannack Stat.; re-en. Sec. 7, p. 516, Cod. Stat. 1871; amd. Sec. 36, p. 47, L. 1877; re-en. Sec. 36, 1st Div. Rev. Stat. 1879; re-en. Sec. 36, 1st Div. Comp. Stat. 1887; re-en. Sec. 490, C. Civ. Proc. 1895; re-en. Sec. 6439, Rev. C. 1907; re-en. Sec. 9022, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 325; re-en. Sec. 9022, R.C.M. 1935; R.C.M. 1947, 93-2511.

70-19-411. Occupancy and payment of taxes necessary to prove adverse possession. In no case shall adverse possessions be considered established under this code unless it shall be shown that the land has been occupied and claimed for a period of 5 years continuously and the party or persons, their predecessors, and grantors have during such period paid all the taxes, state, county, or municipal, which have been legally levied and assessed upon said land.

History: En. Sec. 1, Ch. 3, L. 1917; re-en. Sec. 9024, R.C.M. 1921; re-en. Sec. 9024, R.C.M. 1935; amd. Sec. 7, Ch. 224, L. 1953; R.C.M. 1947, 93-2513.

70-19-412. Relation of landlord and tenant as affecting adverse possession. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is considered the possession of the landlord until the expiration of 5 years from the termination of the tenancy or, when there has been no written lease, until the expiration of 5 years from the time of the last payment of rent, notwithstanding that the tenant may have acquired another title or may have claimed to hold adversely to the landlord. However, the enumerated presumptions may not be made after the periods prescribed in this section.

History: En. Sec. 37, p. 47, L. 1877; re-en. Sec. 37, 1st Div. Rev. Stat. 1879; re-en. Sec. 37, 1st Div. Comp. Stat. 1887; amd. Sec. 491, C. Civ. Proc. 1895; re-en. Sec. 6440, Rev. C. 1907; re-en. Sec. 9023, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 326; re-en. Sec. 9023, R.C.M. 1935; amd. Sec. 6, Ch. 224, L. 1953; R.C.M. 1947, 93-2512; amd. Sec. 2139, Ch. 56, L. 2009.

Cross-References

The Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

70-19-413. Certain disabilities to suspend running of statutory period. (1) Subsection (2) applies if a person entitled to commence an action for the recovery of real property or for the recovery of the possession of real property or to make any entry or defense founded on the title to real property or to rents or services out of the same is, at the same time the title first descends or accrues:

(a) under the age of majority;

(b) committed pursuant to 53-21-127; or

(c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term of less than for life.

(2) The time during which disability continues is not considered any portion of the time in this chapter limited for the commencement of the action or the making of the entry or defense. The action may be commenced or entry or defense made within the period of 5 years after the disability ceases or after the death of the person entitled who dies under the disability, but the action may not be commenced or entry or defense made after that period.

History: En. Sec. 39, p. 48, L. 1877; re-en. Sec. 39, 1st Div. Rev. Stat. 1879; re-en. Sec. 39, 1st Div. Comp. Stat. 1887; amd. Sec. 493, C. Civ. Proc. 1895; re-en. Sec. 6442, Rev. C. 1907; re-en. Sec. 9026, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 328; re-en. Sec. 9026, R.C.M. 1935; amd. Sec. 8, Ch. 224, L. 1953; R.C.M. 1947, 93-2515; amd. Sec. 6, Ch. 115, L. 1979; amd. Sec. 181, Ch. 575, L. 1981; amd. Sec. 35, Ch. 490, L. 1997.

70-19-414. Right of possession not affected by descent cast. The right of a person to the possession of real property is not impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

History: En. Sec. 38, p. 48, L. 1877; re-en. Sec. 38, 1st Div. Rev. Stat. 1879; re-en. Sec. 38, 1st Div. Comp. Stat. 1887; re-en. Sec. 492, C. Civ. Proc. 1895; re-en. Sec. 6441, Rev. C. 1907; re-en. Sec. 9025, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 327; re-en. Sec. 9025, R.C.M 1935; R.C.M. 1947, 93-2514.

70-19-415 through 70-19-420 reserved.

70-19-421. Action to recover royalty interest in land sold for taxes. An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210.

History: En. Sec. 4, Ch. 458, L. 1985.

Cross-References

Deed of conveyance — reservation of mineral royalty interest, 7-8-2305.

70-19-422 through 70-19-425 reserved.

70-19-426. Residential construction disputes — definitions. As used in 70-19-427, 70-19-428, and this section, the following definitions apply:

(1) (a) "Action" means any civil lawsuit or action in contract or tort for damage or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction or remodeling of a residence.

(b) The term does not include a civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means a unit owners' organization or a nonprofit corporation created to own and operate portions of a planned community that has the power to require unit owners to pay the costs and expenses incurred in the performance of the association's obligations.

(3) "Claimant" means a home owner or association that asserts a claim against a construction professional concerning a defect in the construction or remodeling of a residence.

(4) "Construction defect" means a deficiency in or arising out of the supervision, construction, or remodeling of a residence that results from any of the following:

(a) defective materials, products, or components used in the construction or remodeling of a residence;

(b) violation of the applicable building, plumbing, or electrical codes in effect at the time of the construction or remodeling of a residence;

(c) failure to construct or remodel a residence in accordance with contract specifications or accepted trade standards.

(5) "Construction professional" means a builder, builder vendor, contractor, or subcontractor performing or furnishing the supervision of the construction or remodeling of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(6) (a) "Home owner" means:

(i) any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the remodeling, construction, or construction and sale of a residence; or

(ii) an association as defined in this section.

(b) The term home owner includes but is not limited to a subsequent purchaser of a residence from any home owner.

(7) "Residence" means a single-family house or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system.

(8) "Serve" or "service" means personal service or delivery by certified mail to the last-known address of the addressee.

History: En. Sec. 1, Ch. 412, L. 2003.

70-19-427. Residential construction disputes — limitation on consumer protection actions — notice and opportunity to repair — tolling of statute of limitations — presumption of compliance with construction standards. (1) Prior to commencing an action against a construction professional for a construction defect, the claimant shall serve written notice of claim on the construction professional. The notice of claim must state that the claimant asserts a construction defect claim against the construction professional and must describe the claim in reasonable detail sufficient to determine the general nature of the defect. If a written notice of claim is served under this section within the time prescribed for the filing of an action under 27-2-208, the statute of limitations for construction defect claims is tolled. Assertion of a claim under this section precludes a claimant from bringing or maintaining an action under 30-14-133.

(2) Within 21 days after service of the notice of claim, the construction professional shall serve a written response on the claimant. The written response must:

(a) propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified timeframe. The proposal must include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) offer to compromise and settle the claim by monetary payment without inspection; or

(c) state that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3) (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2), the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2), the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the notice of rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at any time after that date the construction professional may terminate the proposal or offer by serving written notice on the claimant. The claimant may, after service, bring an action against the construction professional for the construction defect claim described in the notice of claim.

(4) (a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a), the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence, as agreed by the parties, to inspect the premises and the claimed defect.

(b) Within 14 days following completion of the inspection, the construction professional shall serve on the claimant:

(i) a written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of the construction;

(ii) a written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b);

(iii) a written offer to remedy the claim through a combination of repair and monetary payment pursuant to subsection (2)(b); or

(iv) a written statement setting forth the reasons why the construction professional will not proceed further to remedy the alleged defect.

(c) If the construction professional does not proceed further to remedy the alleged construction defect within the agreed-upon time or if the construction professional fails to comply with the provisions of subsection (4)(b), the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to subsection (4)(b)(i) or (4)(b)(ii) to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to subsection (4)(b)(i) or (4)(b)(ii), then at any time after that date the construction professional may terminate the offer by serving written notice on the claimant.

(5) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) or (4)(b)(iii) shall do so by serving the construction professional with a written notice of acceptance within 30 days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction according to the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including but not limited to repair of additional defects.

(6) Subsequently discovered claims of construction defects must be administered separately under 70-19-428 and this section, unless otherwise agreed to by the parties.

(7) This section may not be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform within the time agreed upon pursuant to subsection (4)(b) or (5)(b).

(8) This section may not be enforced unless the home owner has been given written notice of the requirements of 70-19-426, 70-19-428, and this section.

History: **En. Sec. 2, Ch. 412, L. 2003; amd. Sec. 2, Ch. 46, L. 2021.**

70-19-428. Construction defect disputes — damages. (1) In a suit subject to 70-19-427 and this section, the claimant may recover only the following damages proximately caused by a construction defect:

(a) the reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under 70-19-427;

(b) the reasonably necessary expenses of temporary housing during the repair period;

(c) the reduction in market value, if any, to the extent the reduction is due to a construction defect; and

(d) reasonable costs and attorney fees.

(2) Sections 70-19-426, 70-19-427, and this section do not supersede contractual alternative dispute resolution procedures contained in a contract between a claimant and a construction professional.

History: **En. Sec. 3, Ch. 412, L. 2003.**

CHAPTER 20
TRANSFER OF REAL PROPERTY

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Chapter Cross-References

Breach of agreement to convey real property, 27-1-314.
Breach of agreement to buy real property, 27-1-315.
Breach of covenants in grants of estates in real property, 27-1-316.
Montana Title Insurance Act, Title 33, ch. 25.
Prohibited transactions with foreign adversaries, 35-30-103.
Transfer of property — grants and their interpretation, Title 70, ch. 1, part 5.
Small tract financing — trust indentures, Title 71, ch. 1, part 3.

Part 1
Method of Transfer

70-20-101. Transfer to be in writing — statute of frauds. An estate or interest in real property, other than an estate at will or for a term not exceeding 1 year, may not be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by the party's lawful agent authorized by writing.

History: En. Sec. 6, p. 393, Cod. Stat. 1871; re-en. Sec. 160, 5th Div. Rev. Stat. 1879; re-en. Sec. 217, 5th Div. Comp. Stat. 1887; re-en. Sec. 3274, C. Civ. Proc. 1895; re-en. Sec. 7967, Rev. C. 1907; re-en. Sec. 10611, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1971; re-en. Sec. 10611, R.C.M. 1935; R.C.M. 1947, 93-1401-5; amd. Sec. 7, Ch. 115, L. 1979; amd. Sec. 218, Ch. 685, L. 1989; amd. Sec. 2140, Ch. 56, L. 2009.

Cross-References

What contracts must be in writing, 28-2-903.
Contract for sale of real property, 30-11-111.
Unrecorded instruments valid between parties, 70-21-102.

70-20-102. Exceptions to statute of frauds. Section 70-20-101 may not be construed to:

(1) affect the power of a testator in the disposition of the testator's real property by a last will and testament;

(2) prevent any trust from arising or being extinguished by implication or operation of law; or

(3) abridge the power of any court to compel the specific performance of an agreement, in case of partial performance of the agreement.

History: En. Sec. 7, p. 393, Cod. Stat. 1871; re-en. Sec. 161, 5th Div. Rev. Stat. 1879; re-en. Sec. 218, 5th Div. Comp. Stat. 1887; re-en. Sec. 3275, C. Civ. Proc. 1895; re-en. Sec. 7968, Rev. C. 1907; re-en. Sec. 10612, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1972; re-en. Sec. 10612, R.C.M. 1935; R.C.M. 1947, 93-1401-6; amd. Sec. 2141, Ch. 56, L. 2009.

Cross-References

Specific and preventive relief, Title 27, ch. 1, part 4.
Wills, will contracts, and custody and deposit of wills, Title 72, ch. 2, part 5.
Judicial proceedings concerning trusts, Title 72, ch. 38, part 2.

70-20-103. Form of grant. A grant of an estate in real property may be made in substance as follows:

"I, A.B., in consideration of .... dollars paid, grant to C.D. all the real property situated in (insert name of county) County, state of Montana, described as follows: (Here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name as, for instance, "the Norris ranch".)

Witness my hand this (insert day) day of (insert month), 20...

....
A.B."

History: En. Sec. 1501, Civ. C. 1895; re-en. Sec. 4613, Rev. C. 1907; re-en. Sec. 6860, R.C.M. 1921; Cal. Civ. C. Sec. 1092; re-en. Sec. 6860, R.C.M. 1935; R.C.M. 1947, 67-1602; amd. Sec. 88, Ch. 51, L. 1999.

70-20-104. Words of inheritance unnecessary. Words of inheritance or succession are not requisite to transfer a fee in real property.

History: En. Sec. 1476, Civ. C. 1895; re-en. Sec. 4608, Rev. C. 1907; re-en. Sec. 6855, R.C.M. 1921; Cal. Civ. C. Sec. 1072; Field Civ. C. Sec. 478; re-en. Sec. 6855, R.C.M. 1935; R.C.M. 1947, 67-1521.

70-20-105. Joint tenancy — how created. (1) A joint tenancy as to any interest in real property may be established by the owner of the interest by designating in the instrument of conveyance or transfer the names of the joint tenants, including the person's own, without the necessity of any transfer or conveyance to or through a third person.

(2) All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy.

History: En. Sec. 1, Ch. 208, L. 1963; amd. Sec. 1, Ch. 9, L. 1971; R.C.M. 1947, 67-1602.1; amd. Sec. 2142, Ch. 56, L. 2009.

Cross-References

Ownership by several persons — types, 70-1-306.

70-20-106. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1502, Civ. C. 1895; re-en. Sec. 4614, Rev. C. 1907; re-en. Sec. 6861, R.C.M. 1921; Cal. Civ. C. Sec. 1093; Based on Field Civ. C. Sec. 486; re-en. Sec. 6861, R.C.M. 1935; amd. Sec. 33, Ch. 535, L. 1975; R.C.M. 1947, 67-1603.

70-20-107. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1503, Civ. C. 1895; re-en. Sec. 4615, Rev. C. 1907; re-en. Sec. 6862, R.C.M. 1921; Cal. Civ. C. Sec. 1094; re-en. Sec. 6862, R.C.M. 1935; R.C.M. 1947, 67-1604; amd. Sec. 8, Ch. 115, L. 1979.

70-20-108. Attorney-in-fact — how to execute for principal. When an attorney-in-fact executes an instrument transferring an estate in real property, the attorney-in-fact shall subscribe the name of the principal to it and the attorney-in-fact's own name as attorney-in-fact.

History: En. Sec. 1504, Civ. C. 1895; re-en. Sec. 4616, Rev. C. 1907; re-en. Sec. 6863, R.C.M. 1921; Cal. Civ. C. Sec. 1095; re-en. Sec. 6863, R.C.M. 1935; R.C.M. 1947, 67-1605; amd. Sec. 2143, Ch. 56, L. 2009.

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-20-109. Change of owner's name after acquisition — later conveyance to include former name. A person in whom the title of real estate is vested, who afterwards from any cause has the person's name changed, shall, in any conveyances of the real estate, set forth the name in which the person derived title to the real estate, and a failure to comply with the provisions of this section subjects the person to a penalty of $50, to be collected by the county attorney of the county in which the real estate is situated and paid by the person into the treasury of the county for the benefit of the common schools of the county.

History: En. Sec. 1505, Civ. C. 1895; re-en. Sec. 4617, Rev. C. 1907; re-en. Sec. 6864, R.C.M. 1921; Cal. Civ. C. Sec. 1096; re-en. Sec. 6864, R.C.M. 1935; R.C.M. 1947, 67-1606; amd. Sec. 2144, Ch. 56, L. 2009.

70-20-110. Redelivery or cancellation of grant — no retransfer. Redelivering a grant of real property to the grantor or canceling it does not operate to retransfer the title.

History: En. Sec. 1456, Civ. C. 1895; re-en. Sec. 4600, Rev. C. 1907; re-en. Sec. 6847, R.C.M. 1921; Cal. Civ. C. Sec. 1058; Field Civ. C. Sec. 469; re-en. Sec. 6847, R.C.M. 1935; R.C.M. 1947, 67-1513.

70-20-111 and 70-20-112 reserved.

70-20-113. Notice of presence of smoke and carbon monoxide detectors upon sale of dwelling — definitions. (1) Upon the sale or transfer of ownership of a dwelling not otherwise required to have a carbon monoxide detector and a smoke detector, the seller shall provide a written notice to the buyer in a buy-sell agreement or at the time of the sale to the buyer that the dwelling is equipped or is not equipped with a carbon monoxide detector and smoke detectors or other fire detection devices.

(2) Neither the seller nor the seller's agent nor the buyer's agent is liable in a civil action for failure to comply with or for negligence in complying with the requirements of subsection (1). Evidence of failure to comply with or of negligence in complying with subsection (1) is not admissible in a civil action.

(3) In this section, the following definitions apply:

(a) "Carbon monoxide detector" means a device that detects the presence of carbon monoxide and emits an alarm at elevated levels of carbon monoxide.

(b) "Dwelling" means a building or portion of a building, including a mobile home or housetrailer, that contains not more than two dwelling units.

(c) "Dwelling unit" means a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for not more than one family.

(d) "Smoke detector" means a device that detects visible or invisible particles or combustion.

History: En. Sec. 1, Ch. 30, L. 1991; amd. Sec. 1, Ch. 43, L. 2009; amd. Sec. 2145, Ch. 56, L. 2009.

70-20-114 reserved.

70-20-115. Notice to purchaser of property under contract for deed. (1) As used in this section, "purchaser under contract for deed" means:

(a) any person who:

(i) has entered into a contract with the record owner of real property in which it was agreed that the record owner will deliver the deed to the property to the purchaser when certain conditions have been met, such as completion of payments by the purchaser; and

(ii) has recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21;

(b) any assignee or successor of a person included under subsection (1)(a), if such assignee or successor has also recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21.

(2) When it is required by statute that legal notice be given to the owner of real property, the same notice must be given to a purchaser of that property under a contract for deed.

History: En. Sec. 1, Ch. 526, L. 1983.

Cross-References

Resolution of intent by first-class city — notice, 7-2-4312.
Division of assessment, 7-3-1309.
Department of finance, 7-3-4431.
Vacating or changing of street name, 7-3-4448.
Notice of intention to levy tax, 7-13-2304.
Power to order certain improvements without creation of SID, 7-14-4109.
Notice of hearing on urban renewal plan, 7-15-4215.
Notice of hearing on petition to create mosquito district, 7-22-2406.
Notice of tax classification, market value, and taxable value to owners — appeals, 15-7-102.
Reclassification of land by Department, 15-7-208.
Realty Transfer Act, Title 15, ch. 7, part 3.
County Tax Appeal Board — meetings and compensation, 15-15-101.
Independent appraisal option — notice of assessment — opportunity for conference — appeal, 15-23-102.
Notice defined, 25-3-101.
Service of order to repair hazardous condition or demolish structure, 50-62-103.
Conversion of facilities on public property — notice to landowners, 69-4-353.
Contents of complaint, 70-30-203.
Hearing on preliminary plat, 76-3-605.
Removal of infected nursery stock — assessment of costs, 80-7-110.
Notice of condemnation — filing of plat, 82-2-224.
Permit application, 82-4-222.
Reclamation by Board or Department, 82-4-239.
Notice of drilling operations, 82-10-503.

Part 2
Construction of Grant

Part Cross-References

Interpretation of contracts, Title 28, ch. 3.

70-20-201. Rules for construing description. The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

(1) Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount.

(3) Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces and that of lines paramount to both.

(4) When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or thread of the stream is held under another title.

(5) When a navigable lake, where there is no tide, is the boundary, the rights of the grantor to low watermark are included in the conveyance.

(6) When the description refers to a map and that reference is inconsistent with other particulars, it controls them if it appears that the parties acted with reference to the map; otherwise, the map is subordinate to other definite and ascertained particulars.

History: En. Sec. 3413, C. Civ. Proc. 1895; re-en. Sec. 8039, Rev. C. 1907; re-en. Sec. 10683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2077; re-en. Sec. 10683, R.C.M. 1935; R.C.M. 1947, 93-2201-4.

70-20-202. Extrinsic evidence not to be considered in construction of deed — exceptions. (1) When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) where a mistake or imperfection of the writing is put in issue by the pleadings;

(b) where the validity of the agreement is the fact in dispute.

(2) But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in 1-4-102, or to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement" includes deeds and wills as well as contracts between parties.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13.

Cross-References

When extrinsic evidence concerning written agreement may be considered, 28-2-905.

Part 3
Effect of Transfer

70-20-301. Fee simple presumed to pass. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

History: En. Sec. 1511, Civ. C. 1895; re-en. Sec. 4619, Rev. C. 1907; re-en. Sec. 6866, R.C.M. 1921; Cal. Civ. C. Sec. 1105; re-en. Sec. 6866, R.C.M. 1935; R.C.M. 1947, 67-1608.

70-20-302. After-acquired title to pass by operation of law. When a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title to the real property, the real property passes by operation of law to the grantee or the grantee's successors.

History: En. Sec. 32, p. 401, Cod. Stat. 1871; re-en. Sec. 209, 5th Div. Rev. Stat. 1879; re-en. Sec. 267, 5th Div. Comp. Stat. 1887; amd. Sec. 1512, Civ. C. 1895; re-en. Sec. 4620, Rev. C. 1907; re-en. Sec. 6867, R.C.M. 1921; Cal. Civ. C. Sec. 1106; re-en. Sec. 6867, R.C.M. 1935; R.C.M. 1947, 67-1609; amd. Sec. 2146, Ch. 56, L. 2009.

70-20-303. Grant conclusive — exception for good faith purchaser. A grant of an estate in real property is conclusive against the grantor and against every one subsequently claiming under the grantor except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

History: En. Sec. 1513, Civ. C. 1895; re-en. Sec. 4621, Rev. C. 1907; re-en. Sec. 6868, R.C.M. 1921; Cal. Civ. C. Sec. 1107; Field Civ. C. Sec. 490; re-en. Sec. 6868, R.C.M. 1935; R.C.M. 1947, 67-1610; amd. Sec. 2147, Ch. 56, L. 2009.

70-20-304. Implied covenants — free from encumbrance. (1) The use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed implies only the following covenants and none other on the part of the grantor for the grantor and the grantor's heirs to the grantee and the grantee's heirs and assigns unless restrained by express terms contained in the conveyance:

(a) that prior to the time of the execution of the conveyance the grantor has not conveyed the same estate or any right, title, or interest in that estate to any person other than the grantee; and

(b) that the estate is at the time of the execution of the conveyance free from encumbrances done, made, or suffered by the grantor or any person claiming under the grantor.

(2) The enumerated covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

History: En. Sec. 50, p. 487, Bannack Stat.; re-en. Sec. 50, p. 404, Cod. Stat. 1871; re-en. Sec. 227, 5th Div. Rev. Stat. 1879; re-en. Sec. 285, 5th Div. Comp. Stat. 1887; amd. Sec. 1519, Civ. C. 1895; re-en. Sec. 4627, Rev. C. 1907; re-en. Sec. 6874, R.C.M. 1921; Cal. Civ. C. Sec. 1113; re-en. Sec. 6874, R.C.M. 1935; R.C.M. 1947, 67-1616; amd. Sec. 2148, Ch. 56, L. 2009.

Cross-References

Breach of covenants in grants of estates in real property, 27-1-316.

Form of covenants, 30-11-110.

70-20-305. Encumbrance defined. The term "encumbrances" includes taxes, assessments, and all liens upon real property.

History: En. Sec. 1520, Civ. C. 1895; re-en. Sec. 4628, Rev. C. 1907; re-en. Sec. 6875, R.C.M. 1921; Cal. Civ. C. Sec. 1114; re-en. Sec. 6875, R.C.M. 1935; R.C.M. 1947, 67-1617.

70-20-306. Responsibility of heirs of covenantor — certain warranties abolished. Lineal and collateral warrants, with all their incidents, are abolished, but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property are, except as provided in 70-1-522, answerable upon the covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law.

History: En. Sec. 49, p. 487, Bannack Stat.; re-en. Sec. 49, p. 403, Cod. Stat. 1871; re-en. Sec. 226, 5th Div. Rev. Stat. 1879; re-en. Sec. 284, 5th Div. Comp. Stat. 1887; amd. Sec. 1521, Civ. C. 1895; re-en. Sec. 4629, Rev. C. 1907; re-en. Sec. 6876, R.C.M. 1921; Cal. Civ. C. Sec. 1115; re-en. Sec. 6876, R.C.M. 1935; R.C.M. 1947, 67-1618; amd. Sec. 6, Ch. 307, L. 2009.

70-20-307. Transfer of land bounded by highway — what passes. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof unless a different intent appears from the grant.

History: En. Sec. 1518, Civ. C. 1895; re-en. Sec. 4626, Rev. C. 1907; re-en. Sec. 6873, R.C.M. 1921; Cal. Civ. C. Sec. 1112; Based on Field Civ. C. Sec. 492; re-en. Sec. 6873, R.C.M. 1935; R.C.M. 1947, 67-1615.

70-20-308. Easements to pass with property. A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred for the benefit thereof at the time when the transfer was agreed upon or completed.

History: En. Sec. 1510, Civ. C. 1895; re-en. Sec. 4618, Rev. C. 1907; re-en. Sec. 6865, R.C.M. 1921; Cal. Civ. C. Sec. 1104; Field Civ. C. Sec. 488; re-en. Sec. 6865, R.C.M. 1935; R.C.M. 1947, 67-1607.

70-20-309. Transfer of owner ousted of possession — effect. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

History: En. Sec. 1443, Civ. C. 1895; re-en. Sec. 4593, Rev. C. 1907; re-en. Sec. 6840, R.C.M. 1921; Cal. Civ. C. Sec. 1047; re-en. Sec. 6840, R.C.M. 1935; R.C.M. 1947, 67-1506.

70-20-310. Conveyance in joint tenancy — right of survivorship. In all conveyances of real property made in joint tenancy where the right of survivorship is contained in the grant of such conveyance, the right of survivorship exists by virtue of such grant.

History: En. Sec. 1, Ch. 118, L. 1943; R.C.M. 1947, 67-310; amd. Sec. 9, Ch. 115, L. 1979.

70-20-311. Grant on condition subsequent. When a grant is made upon condition subsequent and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant shall reconvey the property to the grantor or the grantor's successors by grant duly acknowledged for the record.

History: En. Sec. 1515, Civ. C. 1895; re-en. Sec. 4623, Rev. C. 1907; re-en. Sec. 6870, R.C.M. 1921; Cal. Civ. C. Sec. 1109; re-en. Sec. 6870, R.C.M. 1935; R.C.M. 1947, 67-1612; amd. Sec. 2149, Ch. 56, L. 2009.

Cross-References

Condition subsequent defined, 28-1-405.

70-20-312. Grant on condition precedent. An instrument purporting to be a grant of real property to take effect upon condition precedent passes the estate upon the performance of the condition.

History: En. Sec. 1516, Civ. C. 1895; re-en. Sec. 4624, Rev. C. 1907; re-en. Sec. 6871, R.C.M. 1921; Cal. Civ. C. Sec. 1110; re-en. Sec. 6871, R.C.M. 1935; R.C.M. 1947, 67-1613.

Cross-References

Condition precedent defined, 28-1-403.

70-20-313. Grant by owner for life or years. A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than the owner could lawfully transfer, does not work a forfeiture of the owner's estate but passes to the grantee all the estate that the grantor could lawfully transfer.

History: En. Sec. 1514, Civ. C. 1895; re-en. Sec. 4622, Rev. C. 1907; re-en. Sec. 6869, R.C.M. 1921; Cal. Civ. C. Sec. 1108; Field Civ. C. Sec. 491; re-en. Sec. 6869, R.C.M. 1935; R.C.M. 1947, 67-1611; amd. Sec. 2150, Ch. 56, L. 2009.

70-20-314. Grant of property occupied by tenant. When real property is occupied by a tenant, a grant of any estate in the property by the tenant's landlord is valid without an agreement to continue the tenancy by the tenant to the grantee. However, the payment of rent to the grantor by the tenant before notice of the grant is binding upon the grantee, and the tenant is not liable to the grantee for any breach of the condition of the lease until the tenant has had notice of the grant.

History: En. Sec. 1517, Civ. C. 1895; re-en. Sec. 4625, Rev. C. 1907; re-en. Sec. 6872, R.C.M. 1921; Cal. Civ. C. Sec. 1111; Field Civ. C. Sec. 493; re-en. Sec. 6872, R.C.M. 1935; R.C.M. 1947, 67-1614; amd. Sec. 2151, Ch. 56, L. 2009.

70-20-315. Validation of unacknowledged deeds. All deeds to real property executed prior to January 1, 1983, in this state or any state or territory of the United States, provided no action is pending on October 1, 1983, to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state and be conclusive evidence of the title to the lands therein described against the grantors, their heirs, and assigns.

History: En. Sec. 1, Ch. 82, L. 1973; R.C.M. 1947, 39-139; amd. Sec. 1, Ch. 296, L. 1983.

70-20-316. Deeds made prior to 1900 — presumption grantor had no wife. When a deed to real property has been made, executed, and acknowledged prior to the year 1900 by a grantor without recital in the body of the deed or acknowledgment as to whether or not the grantor is married or single and the wife of the grantor, if any, not joining in the conveyance or otherwise releasing or conveying the wife's dower, the presumption is that the person conveying the land had no wife living at the date of conveyance and that the land was conveyed free of all right of dower, inchoate or vested.

History: En. Sec. 1, Ch. 183, L. 1945; R.C.M. 1947, 39-131; amd. Sec. 2152, Ch. 56, L. 2009.

Part 4
Fraudulent Conveyances

Part Cross-References

Condition concurrent defined, 28-1-404.
Condition subsequent defined, 28-1-405.
What conditions must be performed before requiring performance by another, 28-1-406.

70-20-401. Instrument made with intent to defraud — void. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof or encumbrancers thereon is void as against every purchaser or encumbrancer for value of the same property or the rents or profits thereof.

History: En. Sec. 1, p. 492, Bannack Stat.; re-en. Sec. 1, p. 392, Cod. Stat. 1871; re-en. Sec. 155, 5th Div. Rev. Stat. 1879; re-en. Sec. 212, 5th Div. Comp. Stat. 1887; amd. Sec. 1650, Civ. C. 1895; re-en. Sec. 4688, Rev. C. 1907; re-en. Sec. 6939, R.C.M. 1921; Cal. Civ. C. Sec. 1227; Field Civ. C. Sec. 535; re-en. Sec. 6939, R.C.M. 1935; R.C.M. 1947, 29-201.

70-20-402. Instrument not void as to purchaser with notice — exception. An instrument is not to be avoided under 70-20-401 in favor of a subsequent purchaser or encumbrancer having notice at the time the purchase was made or the lien was acquired unless the person in whose favor the instrument was made was a privy to the fraud intended.

History: En. Sec. 2, p. 492, Bannack Stat.; re-en. Sec. 2, p. 392, Cod. Stat. 1871; re-en. Sec. 156, 5th Div. Rev. Stat. 1879; re-en. Sec. 213, 5th Div. Comp. Stat. 1887; amd. Sec. 1651, Civ. C. 1895; re-en. Sec. 4689, Rev. C. 1907; re-en. Sec. 6940, R.C.M. 1921; Cal. Civ. C. Sec. 1228; Field Civ. C. Sec. 536; re-en. Sec. 6940, R.C.M. 1935; R.C.M. 1947, 29-202; amd. Sec. 2153, Ch. 56, L. 2009.

70-20-403. Grant by person with power to revoke — power executed. (1) When a power to revoke or modify an instrument affecting the title to or enjoyment of an estate in real property is reserved to the grantor or given to any other person, a subsequent grant of or charge upon the estate by the person having the power of revocation in favor of a purchaser or encumbrancer for value operates as a revocation of the original instrument, to the extent of the power, in favor of the purchaser or encumbrancer.

(2) When a person having a power of revocation within the provisions of subsection (1) is not entitled to execute it until after the time at which the person makes the grant or charge as described in that subsection, the power is considered to be executed as soon as the person is entitled to execute it.

History: (1)En. Sec. 3, p. 492, Bannack Stat.; re-en. Sec. 3, p. 392, Cod. Stat. 1871; re-en. Sec. 157, 5th Div. Rev. Stat. 1879; re-en. Sec. 214, 5th Div. Comp. Stat. 1887; amd. Sec. 1652, Civ. C. 1895; re-en. Sec. 4690, Rev. C. 1907; re-en. Sec. 6941, R.C.M. 1921; Cal. Civ. C. Sec. 1229; Field Civ. C. Sec. 537; re-en. Sec. 6941, R.C.M. 1935; Sec. 29-203, R.C.M. 1947; (2)En. Sec. 1653, Civ. C. 1895; re-en. Sec. 4691, Rev. C. 1907; re-en. Sec. 6942, R.C.M. 1921; Cal. Civ. C. Sec. 1230; Field Civ. C. Sec. 538; re-en. Sec. 6942, R.C.M. 1935; Sec. 29-204, R.C.M. 1947; R.C.M. 1947, 29-203, 29-204; amd. Sec. 2154, Ch. 56, L. 2009.

70-20-404. Purchaser in good faith not affected. The rights of a purchaser or encumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this part.

History: En. Sec. 1654, Civ. C. 1895; re-en. Sec. 4692, Rev. C. 1907; re-en. Sec. 6943, R.C.M. 1921; Field Civ. C. Sec. 539; re-en. Sec. 6943, R.C.M. 1935; R.C.M. 1947, 29-205.

70-20-405. Other provisions on unlawful transfers — where found. Other provisions concerning unlawful transfers are contained in Title 31, chapter 2, part 3, concerning the special relations of debtor and creditor.

History: En. Sec. 1655, Civ. C. 1895; re-en. Sec. 4693, Rev. C. 1907; re-en. Sec. 6944, R.C.M. 1921; Cal. Civ. C. Sec. 1231; Field Civ. C. Sec. 541; re-en. Sec. 6944, R.C.M. 1935; R.C.M. 1947, 29-206; amd. Sec. 10, Ch. 115, L. 1979.

Part 5
Residential Real Property Disclosure Requirements

70-20-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Adverse material fact" means a condition, malfunction, or problem that would have a materially adverse effect on the monetary value of real property, that affects the structural integrity of any improvements located on the real property, or that presents a documented health risk to occupants of the real property or would impair the health or safety of future occupants of the real property.

(2) "Buyer" means one or more persons who are attempting to acquire an ownership interest in real property.

(3) "Contract" means a real estate purchase contract between a buyer and a seller for the sale, conveyance, or exchange of real property, the option to purchase real property, or a lease with an option to purchase real property.

(4) "Disclosure statement" means the statement described in 70-20-502(1).

(5) "Offer to purchase" means an offer to transfer real property made by a buyer pursuant to a written contract.

(6) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other legal entity or any combination of these.

(7) "Residential real property" means real property that is improved by a building or other structure designed or intended for occupancy as a residence and that has one to four dwelling units or an individually owned unit in a structure of any size and includes:

(a) real property that has a combined residential and commercial use;

(b) a manufactured home that has been declared an improvement to real property under 15-1-116; and

(c) a condominium as defined in 70-23-102(7).

(8) "Seller" means one or more persons who are attempting to transfer an ownership interest in real property.

(9) "Transfer" means a sale or conveyance of, exchange of, or option to purchase by written instrument an ownership interest in real property for consideration.

History: En. Sec. 1, Ch. 375, L. 2023.

70-20-502. Seller disclosure — statement. (1) In any transfer of residential real property in the state, the seller shall provide a disclosure statement to a buyer disclosing any adverse material facts that concern the residential real property and of which the seller has actual knowledge. The disclosure statement must be provided by the seller prior to or contemporaneously with the execution of a contract, either directly or via the real estate agent or other authorized representative of the seller, and must be provided to the buyer or the real estate agent or other authorized representative of the buyer. The disclosure statement must contain, at a minimum, any of the following information of which the seller has actual knowledge:

(a) matters affecting legal ownership or title to the residential real property or the seller's ability to transfer the residential real property;

(b) matters affecting water service to the residential real property or the water source serving the residential real property;

(c) matters affecting the system for wastewater treatment that serves the residential real property;

(d) information concerning utility connections for the residential real property;

(e) matters affecting the buildings or other structures designed or intended for occupancy as a residence, including water intrusion, and problems or other issues related to any structural system or improvement, including any well, septic system, roof, foundation, plumbing, electrical system, heating system, windows, doors, or appliances;

(f) whether any substantial additions or alterations have been made to the residential real property without a building permit;

(g) whether there are any hazardous materials or pest infestations located on the residential real property or in the immediate area;

(h) whether there are any problems with settling, soil, standing water, or drainage on the residential real property or in the immediate area;

(i) whether any portion of the residential real property has been tested or treated for asbestos, radon gas, lead-based paint, mold, methamphetamine, fuel or chemical storage tanks, or contaminated soil or water; and

(j) any other adverse material fact, including environmental issues, structural system issues, mechanical issues, legal issues, physical issues, or others not listed above of which the seller has actual knowledge concerning the residential real property.

(2) The disclosure statement must also include statements substantially similar to the following:

(a) that the disclosure statement constitutes a statement of the conditions of the residential real property and information concerning the residential real property actually known by the seller;

(b) that the seller or the real estate agent or other authorized representative of the seller is not obligated to investigate the residential real property in preparing the disclosure statement and that unless the buyer is otherwise advised in writing, the seller, other than having lived at or owning the property, possesses no greater knowledge than that which could be obtained by a careful inspection of the property by the buyer;

(c) that unless the buyer and seller have otherwise agreed in writing, any contract is not effective until 3 days after the buyer has received the disclosure statement, and during that delay the prospective buyer may withdraw or rescind any contract to purchase the residential real property without penalty;

(d) that the disclosure statement is not a warranty of any kind by the seller or the real estate agent or other authorized representative of the seller in the transaction involving the transfer of the residential real property; and

(e) that the disclosure statement is not a substitute for any inspections conducted by or for the buyer and that the buyer is encouraged to consult independent inspectors to aid in the buyer's due diligence process prior to the purchase of the residential real property.

History: En. Sec. 2, Ch. 375, L. 2023.

70-20-503. Exempt transactions. The written disclosure statement set forth in 70-20-502(1) is not required for the following transfers of residential real property:

(1) transfers pursuant to a court order, including but not limited to a transfer ordered by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, or a transfer that results from an order for specific performance of a contract or other agreement between persons;

(2) transfers between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to this decree;

(3) transfers to a mortgagee by a mortgagor or successor in interest who is in default, sales to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, any foreclosure sale after default, any foreclosure sale after default in an obligation secured by a mortgage, a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, sales by a mortgagee or a beneficiary under a deed of trust who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the residential real property by a deed in lieu of foreclosure, sales to the legal owner or lienholder of a manufactured home or mobile home by a registered owner or successor in interest who is in default, or sales by reason of any foreclosure of a security interest in a manufactured home or mobile home;

(4) transfers from one co-owner to one or more other co-owners;

(5) transfers to a person who is a spouse, child by blood or adoption, or parent of the seller or any other owner of the residential real property; and

(6) transfers when in the contract the buyer has waived the right to receive a disclosure statement at the time of submitting the offer to purchase to the seller.

History: En. Sec. 3, Ch. 375, L. 2023.

70-20-504. Buyer's right to rescind. (1) Unless otherwise agreed to by the buyer and the seller in writing, if a disclosure statement is provided by a seller to a buyer after the execution of a contract, the buyer shall have 3 days from the day the seller or the real estate agent or other authorized representative of the seller delivers the disclosure statement to rescind the contract by delivering a separately signed written statement of rescission to the seller or the real estate agent or other authorized representative of the seller.

(2) The buyer may waive the right to rescind in any offer to purchase.

History: En. Sec. 4, Ch. 375, L. 2023.

70-20-505. Purpose of disclosure statement. (1) A disclosure statement as provided in 70-20-502 does not constitute a warranty of any kind by the seller or the real estate agent or other authorized representative of the seller.

(2) The disclosure statement must be considered a disclosure by the seller only and not the real estate agent or other authorized representative of the seller.

(3) The seller may not be responsible for misstatements or errors in a disclosure statement that are based on information a seller obtained from a reliable third-party, including a local governing agency.

History: En. Sec. 5, Ch. 375, L. 2023.

CHAPTER 21
RECORDING TRANSFERS AND OTHER TRANSACTIONS RELATING TO REAL PROPERTY

Part 1 — General Provisions

70-21-101. Instrument defined — abstract.
70-21-102. Unrecorded instruments valid between parties.
70-21-103. Unrecorded deeds — to whom belong.
70-21-104. Removal of records prohibited — exceptions.

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70-21-201. What may be recorded — recording copy in another county.
70-21-202. Certain transfers in trust — mortgages — when to be recorded.
70-21-203. Acknowledgment of instruments required — exceptions.
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70-21-205. Acknowledgment unnecessary for recording judgments.
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70-21-208. In what county to be recorded.
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70-21-210. Clerk to endorse fee.
70-21-211. Record books to be separate.
70-21-212. Other duties of recorder — where found.
70-21-213. Taxes paid before recording division or merger of real property.

Part 3 — Effect of Recording

70-21-301. Conveyance defined.
70-21-302. Recording as constructive notice — effect of recording copy in other county.
70-21-303. After-acquired interest — effect on notice.
70-21-304. Conveyance void as against other conveyance recorded first.
70-21-305. Abstract of conveyance — effect of recording.
70-21-306. Recording judgments to impart notice.
70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided.
70-21-308. Power of attorney contained in recorded instrument — how revoked.
70-21-309. Validation of conveyances recorded after defective execution — notice imparted.
70-21-310. Validation of recorded instruments omitting address of grantee — notice imparted.

Part 1
General Provisions

70-21-101. Instrument defined — abstract. For the purposes of Title 1, chapter 5; part 2 of this chapter; and 70-21-310, the word instrument includes an abstract of an instrument that must be executed and acknowledged or proved by all parties executing the abstracted document and contains:

(1) the names and addresses of the parties to the instrument;
(2) a description of the real property affected;
(3) a statement that this is an abstract of another document;
(4) a short statement of the effect of the document abstracted;
(5) the name and address of the person who will provide a full and complete copy of the document abstracted, without cost, upon request of any person.

History: En. Sec. 2, Ch. 218, L. 1971; R.C.M. 1947, 73-101.1; amd. Sec. 20, Ch. 192, L. 1993.

70-21-102. Unrecorded instruments valid between parties. An unrecorded instrument is valid as between the parties and those who have notice thereof.

History: En. Sec. 1644, Civ. C. 1895; re-en. Sec. 4687, Rev. C. 1907; re-en. Sec. 6938, R.C.M. 1921; Cal. Civ. C. Sec. 1217; re-en. Sec. 6938, R.C.M. 1935; R.C.M. 1947, 73-205.

70-21-103. Unrecorded deeds — to whom belong. Instruments essential to the title of real property and which are not kept in a public office as a record pursuant to law belong to the person in whom, for the time being, such title may be vested and pass with the title.

History: En. Sec. 1373, Civ. C. 1895; re-en. Sec. 4568, Rev. C. 1907; re-en. Sec. 6815, R.C.M. 1921; Cal. Civ. C. Sec. 994; Field Civ. C. Sec. 438; re-en. Sec. 6815, R.C.M. 1935; R.C.M. 1947, 67-1113.

70-21-104. Removal of records prohibited — exceptions. The record of a conveyance of real property or any other record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20.

Part 2
Recording — Procedure

Part Cross-References

Documents subject to recording, 7-4-2613.
Procedure to record documents, 7-4-2617.

70-21-201. What may be recorded — recording copy in another county. (1) Any instrument or judgment affecting the title to or possession of real property may be recorded under this part.

(2) When any instrument or judgment affecting the title to or possession of real property situated in more than one county in this state has been recorded in either of such counties, a copy thereof, certified to by the county clerk of the county in which it has been recorded, may be recorded in any other county in this state wherein any portion of the real property affected by such instrument or judgment is situated, and such records will have the same effect as if the original instrument or judgment had been so recorded.

History: En. Sec. 1570, Civ. C. 1895; re-en. Sec. 4643, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1919; re-en. Sec. 6890, R.C.M. 1921; Cal. Civ. C. Sec. 1158; Field Civ. C. Sec. 508; re-en. Sec. 6890, R.C.M. 1935; R.C.M. 1947, 73-101.

Cross-References

Documents subject to recording, 7-4-2613.

70-21-202. Certain transfers in trust — mortgages — when to be recorded. Transfers of property in trust for the benefit of creditors and transfers or liens on property by way of mortgage or abstract of such document are required to be recorded in the cases specified in Title 31, chapter 2, on the special relation of debtor and creditor and Title 71 on mortgages, respectively.

History: En. Sec. 1575, Civ. C. 1895; re-en. Sec. 4648, Rev. C. 1907; re-en. Sec. 6895, R.C.M. 1921; Cal. Civ. C. Sec. 1164; Field Civ. C. Sec. 511; re-en. Sec. 6895, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1971; R.C.M. 1947, 73-107.

Cross-References

Recording of mortgages and assignments, 71-1-207.

70-21-203. Acknowledgment of instruments required — exceptions. Unless an instrument belongs to a class provided for in either 70-21-205 or 70-21-207, before the instrument can be recorded, its execution must be acknowledged as provided in subsection (1) or proved as provided in subsection (2).

(1) Execution of the instrument must be acknowledged, as acknowledgment is defined in 1-5-602:

(a) by the person executing it; or

(b) if executed by a corporation, by its president, vice president, secretary, or assistant secretary or by any other person duly authorized by resolution by the corporation to act on behalf of the corporation.

(2) Execution of the instrument must be proved by a subscribing witness or as provided in 1-5-302 and 1-5-303. Proof of execution as provided for in this subsection must be notarized as provided in Title 1, chapter 5.

History: En. Sec. 1573, Civ. C. 1895; re-en. Sec. 4646, Rev. C. 1907; re-en. Sec. 6893, R.C.M. 1921; Cal. Civ. C. Sec. 1161; Based on Field Civ. C. Sec. 509; amd. Sec. 1, Ch. 16, L. 1931; re-en. Sec. 6893, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1937; R.C.M. 1947, 73-105; amd. Sec. 21, Ch. 192, L. 1993; amd. Sec. 89, Ch. 51, L. 1999.

70-21-204. Proof of handwriting acceptable for recording — when. An instrument proved and certified pursuant to 1-5-302 and 1-5-303 may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

History: En. Sec. 1574, Civ. C. 1895; re-en. Sec. 4647, Rev. C. 1907; re-en. Sec. 6894, R.C.M. 1921; Cal. Civ. C. Sec. 1162; Field Civ. C. Sec. 510; re-en. Sec. 6894, R.C.M. 1935; R.C.M. 1947, 73-106.

70-21-205. Acknowledgment unnecessary for recording judgments. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

History: En. Sec. 1571, Civ. C. 1895; re-en. Sec. 4644, Rev. C. 1907; re-en. Sec. 6891, R.C.M. 1921; Cal. Civ. C. Sec. 1159; re-en. Sec. 6891, R.C.M. 1935; R.C.M. 1947, 73-102.

70-21-206. Recording of return of sale under court decree. Where real estate is sold under a decree of court, return of such sale shall be made and filed in the office of the clerk of court. The clerk shall record the return so made the same as if it were to an execution wherein a levy upon real estate had been made, provided that where the return contains a true copy of the decree of court under which such sale was made, the clerk shall record all of the return except such copy of the decree and, in lieu of recording such copy, shall insert in the record the following:

"The original judgment and decree, the true copy which is set forth in this return, is recorded in judgment book ...., at pages .... to ...., inclusive, thereof."

History: En. Sec. 1, Ch. 42, L. 1927; re-en. Sec. 6891.1, R.C.M. 1935; R.C.M. 1947, 73-103.

70-21-207. Letters patent and other federal and state documents — recording without acknowledgment. Letters patent from the United States or from the state of Montana or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States or the state of Montana which evidence title to land or affect the title thereof, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost or are beyond the control of any party deraigning title therefrom or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original for title or for evidence until the original letters patent be recorded.

History: En. Sec. 1572, Civ. C. 1895; re-en. Sec. 4645, Rev. C. 1907; re-en. Sec. 6892, R.C.M. 1921; Cal. Civ. C. Sec. 1160; re-en. Sec. 6892, R.C.M. 1935; amd. Sec. 1, Ch. 148, L. 1957; R.C.M. 1947, 73-104.

70-21-208. In what county to be recorded. Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

History: En. Sec. 1590, Civ. C. 1895; re-en. Sec. 4650, Rev. C. 1907; re-en. Sec. 6898, R.C.M. 1921; Cal. Civ. C. Sec. 1169; Based on Field Civ. C. Sec. 512; re-en. Sec. 6898, R.C.M. 1935; R.C.M. 1947, 73-110.

70-21-209. When instrument considered recorded. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the county clerk's office with the proper officer for record.

History: En. Sec. 1591, Civ. C. 1895; re-en. Sec. 4651, Rev. C. 1907; re-en. Sec. 6899, R.C.M. 1921; Cal. Civ. C. Sec. 1170; Based on Field Civ. C. Sec. 513; re-en. Sec. 6899, R.C.M. 1935; R.C.M. 1947, 73-111.

70-21-210. Clerk to endorse fee. The county clerk shall in all cases endorse the amount of the fee for recording on the instrument recorded.

History: En. Sec. 1576, Civ. C. 1895; re-en. Sec. 4649, Rev. C. 1907; re-en. Sec. 6896, R.C.M. 1921; Cal. Civ. C. Sec. 1165; re-en. Sec. 6896, R.C.M. 1935; R.C.M. 1947, 73-108; amd. Sec. 2155, Ch. 56, L. 2009.

70-21-211. Record books to be separate. Grants absolute in terms are to be recorded in one set of books and mortgages and securities in the nature of mortgages in another.

History: En. Sec. 1592, Civ. C. 1895; re-en. Sec. 4652, Rev. C. 1907; re-en. Sec. 6900, R.C.M. 1921; Cal. Civ. C. Sec. 1171; re-en. Sec. 6900, R.C.M. 1935; R.C.M. 1947, 73-112.

70-21-212. Other duties of recorder — where found. The duties of county clerks in respect to recording instruments are prescribed by Title 7, chapter 4, part 26.

History: En. Sec. 1593, Civ. C. 1895; re-en. Sec. 4653, Rev. C. 1907; re-en. Sec. 6901, R.C.M. 1921; Cal. Civ. C. Sec. 1172; Based on Field Civ. C. Sec. 514; re-en. Sec. 6901, R.C.M. 1935; R.C.M. 1947, 73-113.

70-21-213. Taxes paid before recording division or merger of real property. An instrument or deed evidencing either a division of real property or a merger of real property may not be accepted for recordation unless accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid.

History: En. Sec. 4, Ch. 366, L. 1993.

Part 3
Effect of Recording

70-21-301. Conveyance defined. The term "conveyance", as used in 70-21-302 through 70-21-304, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered or by which the title to real property may be affected, except wills.

History: En. Sec. 1642, Civ. C. 1895; re-en. Sec. 4685, Rev. C. 1907; re-en. Sec. 6936, R.C.M. 1921; Cal. Civ. C. Sec. 1215; Based on Field Civ. C. Sec. 531; re-en. Sec. 6936, R.C.M. 1935; R.C.M. 1947, 73-203.

70-21-302. Recording as constructive notice — effect of recording copy in other county. (1) Every conveyance of real property acknowledged or proved and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

(2) A certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance.

History: En. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R.C.M. 1921; Cal. Civ. C. Secs. 1213, 1218; re-en. Sec. 6934, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1967; R.C.M. 1947, 73-201(part).

70-21-303. After-acquired interest — effect on notice. Further, every conveyance and/or encumbrance of real property acknowledged or proved and certified and recorded as prescribed by law and which is executed by one who thereafter acquires an interest in the real property by a conveyance which said conveyance is constructive notice as aforesaid is, from the time such latter conveyance is filed with the county clerk for record, constructive notice of the contents of such earlier conveyance and/or encumbrance to subsequent takers, purchasers, mortgagees, or other encumbrancers or transferees.

History: En. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R.C.M. 1921; Cal. Civ. C. Secs. 1213, 1218; re-en. Sec. 6934, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1967; R.C.M. 1947, 73-201(part).

70-21-304. Conveyance void as against other conveyance recorded first. Every conveyance of real property, other than a lease for a term not exceeding 1 year, is void against any subsequent purchaser or encumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property or any part thereof in good faith and for a valuable consideration whose conveyance is first duly recorded.

History: En. Sec. 260, 5th Div. Comp. Stat. 1887; re-en. Sec. 1641, Civ. C. 1895; re-en. Sec. 4684, Rev. C. 1907; re-en. Sec. 6935, R.C.M. 1921; Cal. Civ. C. Sec. 1214; Based on Field Civ. C. Sec. 530; re-en. Sec. 6935, R.C.M. 1935; R.C.M. 1947, 73-202.

70-21-305. Abstract of conveyance — effect of recording. An abstract of a conveyance or encumbrance of real property, which abstract is acknowledged or proved and certified and recorded as prescribed by law, shall have the same effect for all purposes of this part as if the conveyance or encumbrance of real property had been acknowledged or proved and certified and recorded as prescribed by law.

History: En. Sec. 3, Ch. 218, L. 1971; R.C.M. 1947, 73-201.1.

70-21-306. Recording judgments to impart notice. Every certified copy of a judgment of partition or any other judgment, filed and recorded as provided in 7-4-2613, from the time of filing the same for record imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lienholders purchase and take with like notice and effect as if such property or judgment was a duly recorded deed, grant, or transfer.

History: En. Sec. 4415, Pol. C. 1895; re-en. Sec. 3036, Rev. C. 1907; re-en. Sec. 4802, R.C.M. 1921; Cal. Pol. C. Sec. 4239; re-en. Sec. 4802, R.C.M. 1935; R.C.M. 1947, 16-2908.

70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided. Any conveyance of real property placed of record in any office of a county clerk and recorder in which the name of the grantee is followed by the word "trustee", "as trustee", or some similar fiduciary term and in which terms and conditions of the purported trust or any limitation on the power of the grantee to convey is not set forth so that any person dealing with the real property could learn from the conveyance what, if any, limitation exists upon the authority of the grantee with regard to the reconveyance or encumbrance of the property must be considered as though the property had been conveyed to the grantee without any limitation upon the grantee's authority to reconvey or encumber as fully as though the word "trustee", "as trustee", or any equivalent fiduciary expression had not been used in connection with the grantee's name. The use of the word "trustee" or "as trustee" or any equivalent fiduciary expression purporting a trust contained in the conveyance does not have force or effect in charging any purchaser or encumbrancer with notice of any limitation of power on the part of the person named as trustee to deal with the lands as the person's own.

History: En. Sec. 1, Ch. 64, L. 1943; R.C.M. 1947, 73-206; amd. Sec. 2156, Ch. 56, L. 2009.

70-21-308. Power of attorney contained in recorded instrument — how revoked. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also acknowledged or proved, certified, and recorded in the same office in which the instrument containing the power was recorded.

History: En. Sec. 1643, Civ. C. 1895; re-en. Sec. 4686, Rev. C. 1907; re-en. Sec. 6937, R.C.M. 1921; Cal. Civ. C. Sec. 1216; Based on Field Civ. C. Sec. 532; re-en. Sec. 6937, R.C.M. 1935; R.C.M. 1947, 73-204.

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-21-309. Validation of conveyances recorded after defective execution — notice imparted. (1) Any instrument affecting real property, provided no action is pending as of October 1, 1991, to set such instrument aside, which was, previous to January 1, 1991, recorded in the office of the county clerk and recorder shall be deemed to impart after that date notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any technical defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to January 1, 1991.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 147, L. 1973; R.C.M. 1947, 73-213; amd. Sec. 1, Ch. 476, L. 1981; amd. Sec. 2, Ch. 296, L. 1983; amd. Sec. 1, Ch. 284, L. 1991.

70-21-310. Validation of recorded instruments omitting address of grantee — notice imparted. (1) Any deed, mortgage, or assignment of mortgage which was, previous to July 1, 1931, copied into the proper book kept in the office of the county clerk and recorder shall be deemed to impart, after July 1, 1931, notice of its contents to subsequent purchasers and encumbrancers notwithstanding the omission therefrom of the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be; and all such instruments recorded before July 1, 1931, which do not contain the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, shall be valid and shall have the same force and effect as though the post-office address of such grantee, mortgagee, or assignee of the mortgagee were contained therein; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to July 1, 1931.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as certified copies of instruments duly recorded containing the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be.

History: En. Sec. 1, Ch. 37, L. 1931; re-en. Sec. 6933.1, R.C.M. 1935; R.C.M. 1947, 39-132.

CHAPTER 22

CORNER RECORDATION ACT SURVEYS AND COORDINATES

Part 1 — Corner Recordation Act

70-22-101. Short title.
70-22-102. Purpose.
70-22-103. Definitions.
70-22-104. Filing of corner record required.
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70-22-107. Form and contents of record — board to prescribe.
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Part 2 — Montana Coordinate System

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70-22-203. Use of x- and y-coordinates.
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70-22-205. Technical description of zones.
70-22-206. Conformity to standards required for use of coordinates in recorded instrument.
70-22-207. Use of term Montana coordinate system limited.
70-22-208. Public land survey description to prevail.
70-22-209. Purchaser or mortgagee not required to rely on description using systems.
70-22-210. Limit on use of Montana coordinate system NAD 27.
70-22-211. Limit on use of Montana coordinate system NAD 83.

Part 1
Corner Recordation Act

70-22-101. Short title. This part may be cited as the "Corner Recordation Act of Montana".
History: En. Sec. 1, Ch. 202, L. 1963; R.C.M. 1947, 67-2001.

70-22-102. Purpose. It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.
History: En. Sec. 2, Ch. 202, L. 1963; R.C.M. 1947, 67-2002.

70-22-103. Definitions. Except when the context indicates a different meaning, terms used in this part must be defined as follows:

(1) An "accessory to a corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) The "board" means the board of professional engineers and professional land surveyors provided for in 2-15-1763.

(3) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(4) A "monument" means an accessory that is presumed to occupy the exact position of a corner.

(5) A "property controlling corner" for a property means a public land survey corner or any property corner that does not lie on a property line of the property in question but that controls the location of one or more of the property corners of the property in question.

(6) A "property corner" means a geographic point on the surface of the earth and is on, is a part of, and controls a property line.

(7) A "public land survey corner" means any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(8) A "reference monument" means a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and that serves to witness the corner.

(9) A "surveyor" means a person who is licensed to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying.

History: **En. Sec. 3, Ch. 202, L. 1963; amd. Sec. 320, Ch. 350, L. 1974; R.C.M. 1947, 67-2003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 73, Ch. 83, L. 1989; amd. Sec. 74, Ch. 492, L. 2001.**

70-22-104. Filing of corner record required. A surveyor shall complete, sign, stamp with the surveyor's seal, and file with the county clerk and recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to the corner that is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by the surveyor and within 90 days after the establishment unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part.

History: **En. Sec. 4, Ch. 202, L. 1963; R.C.M. 1947, 67-2004; amd. Sec. 2157, Ch. 56, L. 2009.**

70-22-105. Filing permitted as to any corner or accessory. (1) A surveyor may file a corner record to any property corner, property controlling corner, reference monument, or accessory to a corner.

(2) The filing of a properly completed corner record, documenting survey data used to determine the position of the corner, may be filed in lieu of filing a certificate of survey, as provided in 76-3-404, for the following listed corners:

(a) a single, previously filed or recorded property corner;
(b) a property controlling corner;
(c) a reference monument; or
(d) an accessory to a corner.

History: **En. Sec. 5, Ch. 202, L. 1963; R.C.M. 1947, 67-2005; amd. Sec. 1, Ch. 549, L. 2003.**

70-22-106. Filing of records on corners established before effective date. Corner records may be filed concerning corners established, reestablished, or restored before July 1, 1963.

History: **En. Sec. 10, Ch. 202, L. 1963; R.C.M. 1947, 67-2010.**

70-22-107. Form and contents of record — board to prescribe. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record, and the board shall prescribe the form in which such corner record shall be presented and filed.

History: **En. Sec. 6, Ch. 202, L. 1963; R.C.M. 1947, 67-2006.**

70-22-108. Corner records to be certified. A corner record may not be filed unless the record is signed by a registered surveyor and stamped with the surveyor's seal, or in the case of an agency of the United States government or the state of Montana, the certificate may be signed by the survey party chief making the survey and approved, signed, and sealed by the registered surveyor in responsible charge of the agency.

History: **En. Sec. 9, Ch. 202, L. 1963; R.C.M. 1947, 67-2009; amd. Sec. 2158, Ch. 56, L. 2009.**

70-22-109. Duties of county clerk. (1) The county clerk and recorder of the county containing the corner must receive the completed corner record and preserve it in a hardbound book. The books must be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed must be placed by the clerk near that same corner on a cross-index plat for public land corners or on an index referenced to tract or lot number in a survey of record. The clerk shall provide an index for that purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee.

History: **En. Sec. 7, Ch. 202, L. 1963; R.C.M. 1947, 67-2007; amd. Sec. 1, Ch. 143, L. 1981; amd. Sec. 2, Ch. 549, L. 2003.**

70-22-110. Surveyor to rehabilitate monument. If a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor shall reconstruct or rehabilitate the monument of the corner and accessories to the corner so that the monument is left by the surveyor in a physical condition so that it remains as permanent a monument as is reasonably possible and so that the monument may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963; R.C.M. 1947, 67-2008; amd. Sec. 2159, Ch. 56, L. 2009.

70-22-111 through 70-22-114 reserved.

70-22-115. Monument preservation. (1) A public or private entity or person shall, before engaging in activity that will or is likely to disturb or destroy a monument or the accessories to a monument, require the following activities to be performed by a professional land surveyor, as defined in 37-67-101, or a qualified person under the direct supervision of a professional land surveyor:

(a) locate and reference the monument or the accessories to the monument; and

(b) file a corner record showing the location of the references to the monument or to the accessories to the monument as required in 70-22-104 and 70-22-105.

(2) A public or private entity or person shall, within 30 days of completing activity that has disturbed or destroyed a monument or the accessories to a monument, require the following activities to be performed by a professional land surveyor, as defined in 37-67-101, or a qualified person under the direct supervision of a professional land surveyor:

(a) restore or replace the monument or the accessories to the monument, using the references established in subsection (1)(b); and

(b) file a new corner record as required in 70-22-104 and 70-22-105.

History: En. Sec. 1, Ch. 314, L. 2009.

Part 2
Montana Coordinate System

70-22-201. Coordinate systems adopted — designation — division of state into zones. (1) The North American datum systems of plane coordinates that have been established by the national oceanic and atmospheric administration/national geodetic survey (formerly the United States coast and geodetic survey) or a successor for defining and stating the positions or locations of points on the surface of the earth within the state of Montana are to be known and designated from now on as the "Montana coordinate system NAD 27", the "Montana coordinate system NAD 83", and the "Montana plane coordinate system".

(2) For the purpose of the use of the Montana coordinate system NAD 27, the state is divided into a north zone and a central zone and a south zone as provided in subsections (3) through (5).

(3) The area now included in the following counties shall constitute the north zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

(4) The area now included in the following counties shall constitute the central zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, McCone, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

(5) The area now included in the following counties shall constitute the south zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

(6) For the purpose of the use of the Montana coordinate system NAD 83, the state is a single zone.

(7) For the purpose of the use of the Montana plane coordinate system (MTPCS), the most recent system of plane coordinates that has been established by the national geodetic survey (NGS), or a successor, that is based on the North American terrestrial reference frame of 2022 (NATRF2022), or a successor, and the national spatial reference system (NSRS), or a successor, and known as the state plane coordinate system (SPCS), or a successor, for defining and stating the geographic positions or locations of points within the state must be known as the "Montana plane coordinate system".

History: En. Sec. 1, Ch. 232, L. 1965; amd. Sec. 1, Ch. 73, L. 1975; R.C.M. 1947, 67-2011; amd. Sec. 1, Ch. 137, L. 1987; amd. Sec. 2, Ch. 473, L. 2023.

70-22-202. Designation of system by zone. (1) As established for use in the north zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, north zone".

(2) As established for use in the central zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, central zone".

(3) As established for use in the south zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, south zone".

History: En. Sec. 2, Ch. 232, L. 1965; R.C.M. 1947, 67-2012; amd. Sec. 2, Ch. 137, L. 1987.

70-22-203. Use of x- and y-coordinates. (1) For the Montana coordinate system NAD 27, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the appropriate zone of this system must consist of two distances expressed in terms of a United States survey foot and decimals of a foot.

(2) For the Montana coordinate system NAD 83 and all later Montana plane coordinate systems, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the zone must consist of two distances expressed in either meters and decimals of a meter or in feet and decimals of a foot. The international conversion value (1 foot equals 0.3048 meters exactly) must be used. The unit of measure must be clearly stated when the coordinate values are expressed.

(3) One of the distances used to express a position or location, to be known as the "east coordinate" or "x-coordinate", must give the position in an east-and-west direction from the y-axis; the other, to be known as the "north coordinate" or "y-coordinate", must give the position in a north-and-south direction from the x-axis. The y-axis of any zone must be parallel with the central meridian of that zone. The x-axis of any zone must be at a right angle to the central meridian of that zone. These coordinates must be made to depend on and conform to plane rectangular coordinate values derived from the NSRS as defined and promulgated by the national oceanic and atmospheric administration/national geodetic survey or its successors and whose plane coordinates have been computed on the systems designated by this part. Any station with coordinates referenced to the NSRS may be used for establishing a survey connection to the Montana coordinate systems.

History: En. Sec. 3, Ch. 232, L. 1965; R.C.M. 1947, 67-2013; amd. Sec. 3, Ch. 137, L. 1987; amd. Sec. 3, Ch. 473, L. 2023.

70-22-204. Description of location. (1) For the purposes of describing the location of any survey station in Montana, it is considered a complete, legal, and satisfactory description of such location to give the position of the survey station on the system of plane coordinates designated in this part.

(2) When any tract of land to be defined by a single description extends from one into another of the NAD 27 coordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

History: En. Sec. 4, Ch. 232, L. 1965; R.C.M. 1947, 67-2014; amd. Sec. 4, Ch. 137, L. 1987.

70-22-205. Technical description of zones. For the purposes of more precisely defining the Montana coordinate systems NAD 27, NAD 83, and MTPCS, the following description by the national oceanic and atmospheric administration/national geodetic survey (formerly the United States coast and geodetic survey) is adopted:

(1) The Montana coordinate system NAD 27, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51′ and 48° 43′, along which parallels the scale must be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 47° 00′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(2) The Montana coordinate system NAD 27, central zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27′ and 47° 53′, along which parallels the scale must be exact. The origin of coordinates is at the

intersection of the meridian 109° 30′ west of Greenwich and the parallel 45° 50′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(3) The Montana coordinate system NAD 27, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52′ and 46° 24′, along which parallels the scale must be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 44° 00′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(4) The Montana coordinate system NAD 83 is a Lambert conformal conic projection of the GRS 80 (Geodetic Reference System 1980) ellipsoid, having standard parallels of north latitudes 45° 00′ and 49° 00′, along which parallels the scale must be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 44° 15′ north latitude. This origin is given the coordinates: x = 600,000 meters and y = 0 meters.

(5) The Montana plane coordinate system must be the state plane coordinate system of 2022 (SPCS2022) or its most recent successor as defined by the national geodetic survey or its successor agency.

History: En. Sec. 5, Ch. 232, L. 1965; amd. Sec. 2, Ch. 73, L. 1975; R.C.M. 1947, 67-2015; amd. Sec. 5, Ch. 137, L. 1987; amd. Sec. 4, Ch. 473, L. 2023.

70-22-206. Conformity to standards required for use of coordinates in recorded instrument. Coordinates based on the Montana coordinate systems purporting to define the position of a point on a land boundary may not be presented to be recorded in any public land records or deed records unless the coordinates have been determined with respect to the national spatial reference system (NSRS) at an accuracy consistent with the relative accuracy of the land boundary as presented in the recorded instrument. Public land or deed records presented for recording that purport to define the position of a point on a land boundary based on coordinates from the Montana coordinate systems must contain a statement that identifies the specific realization of the reference frame or datum of the coordinates, including the coordinate epoch date if applicable, along with the type of equipment and methods used to perform the survey and tie it to the NSRS.

History: En. Sec. 6, Ch. 232, L. 1965; R.C.M. 1947, 67-2016; amd. Sec. 6, Ch. 137, L. 1987; amd. Sec. 1, Ch. 494, L. 2001; amd. Sec. 5, Ch. 473, L. 2023.

70-22-207. Use of term Montana coordinate system limited. The use of the term "Montana coordinate system NAD 27 north, central, or south zone", "Montana coordinate system NAD 83", or "Montana plane coordinate system" on any map, report of survey, or other document must be limited to coordinates based on the Montana coordinate systems as defined in this part.

History: En. Sec. 7, Ch. 232, L. 1965; R.C.M. 1947, 67-2017; amd. Sec. 7, Ch. 137, L. 1987; amd. Sec. 6, Ch. 473, L. 2023.

70-22-208. Public land survey description to prevail. Whenever coordinates based on the Montana coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record.

History: En. Sec. 8, Ch. 232, L. 1965; R.C.M. 1947, 67-2018; amd. Sec. 8, Ch. 137, L. 1987.

70-22-209. Purchaser or mortgagee not required to rely on description using systems. Nothing contained in this part shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana coordinate systems.

History: En. Sec. 9, Ch. 232, L. 1965; R.C.M. 1947, 67-2019; amd. Sec. 9, Ch. 137, L. 1987.

70-22-210. Limit on use of Montana coordinate system NAD 27. The Montana coordinate system NAD 27 north, central, and south zone may not be used after July 1, 1993; the Montana coordinate system NAD 83 is the sole system to be used after this date.

History: En. Sec. 10, Ch. 137, L. 1987.

70-22-211. Limit on use of Montana coordinate system NAD 83. The Montana coordinate system NAD 83 may not be used to define the position of a point on a land boundary for any publicly recorded instrument more than 1 year after the date that SPCS2022 is adopted by NGS as an official part of the NSRS. The Montana plane coordinate system as defined by NGS or its successors is the sole system to be used after this date.

History: En. Sec. 1, Ch. 473, L. 2023.

CHAPTER 23
UNIT OWNERSHIP ACT — CONDOMINIUMS

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Chapter Cross-References

Undivided interest in common elements of condominium project — assessment and taxation, 15-8-511.
Common elements serving residential or commercial development — assessment and taxation, 15-8-512.
Homeowners' association restrictions — real property rights, 70-17-901.

Part 1
General Provisions

70-23-101. Short title. This chapter may be cited as the "Unit Ownership Act".

History: En. Sec. 1, Ch. 120, L. 1965; R.C.M. 1947, 67-2301.

70-23-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Borrower" means a mortgagor, grantor as defined in 71-1-303, or other debtor.

(3) "Building" means a multiple-unit building or buildings comprising a part of the property.

(4) "Common elements" means the general common elements and the limited common elements.

(5) "Common expenses" means:

(a) expenses of administration, maintenance, repair, or replacement of the common elements;

(b) expenses agreed upon as common by all the unit owners; and

(c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the particular condominium.

(6) "Community land trust" means a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that holds title to land beneath individually owned units, including but not limited to single-family homes, townhomes, condominiums, and multiunit rental properties for the purpose of preserving affordable housing.

(7) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter. The term does not include a townhome or a townhouse.

(8) "Conversion" means a change in the character of residential real property from one or more parcels of land with attached condominium units to one or more parcels of land with attached townhome or townhouse units without a change to the undivided interest of the unit owners.

(9) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.

(10) "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) the land on which the building is located, except any portion of the land included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.

(11) "Lienholder" means a person holding a security interest, including a mortgagee, beneficiary of a trust indenture, or other creditor who holds a mortgage, trust indenture, or other instrument that encumbers real property.

(12) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.

(13) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in the element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means the percentage in the aggregate of undivided ownership.

(14) "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.

(15) "Project" means a real estate condominium project whereby a condominium of two or more units located on property submitted to the provisions of this chapter is offered or proposed to be offered for sale.

(16) "Property" means the land, all buildings, improvements, and structures on the land, and all easements, rights, and appurtenances belonging to the land that are submitted to the provisions of this chapter.

(17) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or other instruments or documents affecting the title to real property.

(18) "Townhome" or "townhouse" means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

(19) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts of the property intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(20) "Unit designation" means the number, letter, or combination of numbers and letters designating a unit in the declaration.

(21) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit must be considered a unit owner.

History: En. Sec. 2, Ch. 120, L. 1965; amd. Sec. 1, Ch. 150, L. 1973; R.C.M. 1947, 67-2302; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 12, L. 1999; amd. Sec. 2, Ch. 373, L. 2011; amd. Sec. 1, Ch. 214, L. 2017; amd. Sec. 6, Ch. 323, L. 2019; amd. Sec. 1, Ch. 164, L. 2021.

70-23-103. Applicability — submission by declaration required — optional declaration for townhouses. (1) In order to submit any property to the provisions of this chapter, the sole owner or sole lessee or all of the owners or all of the lessees of the property shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration must be executed in accordance with 70-23-301.

(2) A declaration for a townhome or townhouse may be executed under this section. The provisions of this chapter apply to townhomes or townhouses only if a declaration is executed under this section.

History: En. Sec. 3, Ch. 120, L. 1965; amd. Sec. 2, Ch. 150, L. 1973; R.C.M. 1947, 67-2303; amd. Sec. 5, Ch. 373, L. 2011.

Part 2
Regulation of Unit Sales Prior to Construction
(Repealed)

70-23-201. Repealed. Sec. 3, Ch. 12, L. 1999.
History: En. 67-2303.1 by Sec. 3, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.1.

70-23-202. Repealed. Sec. 3, Ch. 12, L. 1999.
History: En. 67-2303.2 by Sec. 4, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.2.

70-23-203. Repealed. Sec. 3, Ch. 12, L. 1999.
History: En. 67-2303.3 by Sec. 5, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.3.

70-23-204. Repealed. Sec. 3, Ch. 12, L. 1999.
History: En. 67-2303.4 by Sec. 6, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.4; amd. Sec. 11, Ch. 115, L. 1979.

70-23-205. Repealed. Sec. 3, Ch. 12, L. 1999.
History: En. 67-2303.5 by Sec. 7, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.5.

70-23-206. Repealed. Sec. 3, Ch. 12, L. 1999.
History: En. 67-2303.6 by Sec. 8, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.6.

Part 3
Creation — Declaration and Bylaws

70-23-301. Contents of declaration. A declaration must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of the person which must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums, townhomes, or townhouses are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable.

History: En. Sec. 14, Ch. 120, L. 1965; amd. Sec. 11, Ch. 150, L. 1973; R.C.M. 1947, 67-2314; amd. Sec. 1, Ch. 446, L. 2009; amd. Sec. 3, Ch. 373, L. 2011.

70-23-302. Preliminary declaration. A preliminary declaration, setting forth as many of the particulars required by 70-23-301 as may then be practicable, may be recorded before construction of the building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by 70-23-301.

History: En. Sec. 15, Ch. 120, L. 1965; R.C.M. 1947, 67-2315.

70-23-303. Name of property — similarity prohibited. No property shall bear a name using a word which is the same as, similar to, or pronounced the same as a word in the name of any other property or subdivision in the same county, except for the words "apartment", "motel", "building", "court", "place", or similar words.

History: En. Sec. 16, Ch. 120, L. 1965; R.C.M. 1947, 67-2316.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

70-23-304. Declaration to be approved by county before recording. Before a declaration may be recorded in the county in which the property is located, it must be approved by the county. A declaration must be approved unless:

(1) the name does not comply with 70-23-303; and

(2) all taxes and assessments due and payable have not been paid.

History: En. Sec. 17, Ch. 120, L. 1965; amd. Sec. 40, Ch. 391, L. 1973; R.C.M. 1947, 67-2317; amd. Sec. 135, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 279, L. 1997; amd. Sec. 1, Ch. 308, L. 2023.

70-23-305. Recording of declaration. (1) When a declaration is made and approved as required, it must, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date of recording must be entered on the declaration.

(2) At the time of recording a declaration, the person offering it for record shall also file a copy, certified by the recording officer to be a true copy, with the department of revenue.

(3) If the property is located in a city or town, a copy of the declaration only must also be filed with the city or town clerk at the time of recording.

History: En. Sec. 18, Ch. 120, L. 1965; amd. Sec. 41, Ch. 391, L. 1973; R.C.M. 1947, 67-2318; amd. Sec. 1, Ch. 85, L. 1991; amd. Sec. 136, Ch. 27, Sp. L. November 1993.

70-23-306. Floor plans recorded with declaration — certification. (1) Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit, including the unit designation, location and dimensions of each unit, and the common areas to which each has access.

(2) There shall be attached to the floor plans a statement of a registered architect, registered professional engineer, or registered professional land surveyor who has reviewed the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. If the plans do not include a verified statement by an architect, engineer, or surveyor that the plans fully and accurately depict the layout, location, unit designation, and dimensions of each unit as built, there shall be recorded within 30 days from the date of completion of the building or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered professional land surveyor certifying that the floor plans previously filed or being filed simultaneously with the amendment fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965; amd. Sec. 12, Ch. 150, L. 1973; R.C.M. 1947, 67-2319; amd. Sec. 1, Ch. 114, L. 1985.

Cross-References

Licensing of architects, Title 37, ch. 65, part 3.

Licensing of engineers and land surveyors, Title 37, ch. 67, part 3.

70-23-307. Bylaws — adoption, recording, and amendment. (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the presiding officer and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by 75% of the unit owners and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the association of unit owners, is recorded.

History: En. Sec. 20, Ch. 120, L. 1965; R.C.M. 1947, 67-2320.

70-23-308. Contents of bylaws. Subject to 70-1-522, the bylaws must provide for:

(1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors expire annually, the powers and duties of the board, the compensation, if any, of the directors, the method of removal from office of the directors, and whether or not the board may engage the services of a manager or managing agent;

(2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102, that constitutes a quorum;

(3) the election of a presiding officer, a secretary, and a treasurer;

(4) the maintenance, upkeep, and repair of the common elements and payment for those expenses, including the method of approving payment vouchers;

(5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

(6) the manner of collecting from the unit owners their share of the common expenses;

(7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;

(8) restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of the unit owners' respective units and of the common elements by the several unit owners;

(9) the method of amending the bylaws subject to 70-23-307.

History: En. Sec. 21, Ch. 120, L. 1965; R.C.M. 1947, 67-2321; amd. Sec. 2, Ch. 12, L. 1999; amd. Sec. 7, Ch. 307, L. 2009.

70-23-309. Association of unit owners — remote meetings. (1) Unless the terms of the declaration or the bylaws provide otherwise, an association of unit owners may hold a meeting by remote means.

(2) For the purposes of this section, "remote means" includes telephone audio, teleconference, or videoconference.

History: En. Sec. 3, Ch. 185, L. 2021.

Part 4
Nature of the Ownership Interest

70-23-401. Property status of the unit. While the property is submitted to this chapter, a unit in the building may be individually conveyed, leased, or encumbered and may be the subject of ownership, possession, or sale and of all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: En. Sec. 4, Ch. 120, L. 1965; amd. Sec. 9, Ch. 150, L. 1973; R.C.M. 1947, 67-2304.

70-23-402. Exclusive ownership and possession of unit — joint ownership. (1) Each unit owner is entitled to the exclusive ownership and possession of the owner's unit.

(2) A unit may be jointly or commonly owned by more than one person.

History: En. Sec. 5, Ch. 120, L. 1965; amd. Sec. 10, Ch. 150, L. 1973; R.C.M. 1947, 67-2305; amd. Sec. 2160, Ch. 56, L. 2009.

70-23-403. Common elements — undivided interest of unit owner. (1) Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value.

(2) The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

History: En. Sec. 6, Ch. 120, L. 1965; R.C.M. 1947, 67-2306.

70-23-404. Common elements — undivided interest to remain attached to unit. The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

History: En. Sec. 7, Ch. 120, L. 1965; R.C.M. 1947, 67-2307(1).

70-23-405. Common elements to remain undivided — partition prohibited. The common elements shall remain undivided, and no unit owner shall bring any action for partition or division of any part thereof except as provided in 70-23-805. Any covenant to the contrary is void.

History: En. Sec. 7, Ch. 120, L. 1965; R.C.M. 1947, 67-2307(2).

Part 5
Rights and Duties Incidental to Unit Ownership

70-23-501. Common profits and expenses. The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentage of undivided interest of each in the common elements.

History: En. Sec. 8, Ch. 120, L. 1965; R.C.M. 1947, 67-2308.

70-23-502. Certain work on unit by owner prohibited. A unit owner may not make a repair or alteration or perform any other work on the owner's unit that would jeopardize the soundness or safety of the property, reduce the value of the property, or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.

History: En. Sec. 9, Ch. 120, L. 1965; R.C.M. 1947, 67-2309; amd. Sec. 2161, Ch. 56, L. 2009.

70-23-503. Common elements — use by unit owner. Each unit owner may use the common elements in accordance with the purposes for which they are intended but may not hinder or encroach upon the lawful rights of the other unit owners.

History: En. Sec. 10, Ch. 120, L. 1965; R.C.M. 1947, 67-2310.

70-23-504. Maintenance and improvement of common elements. (1) The necessary work of maintenance, repair, and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(2) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair, or replacement of the common elements or to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.

History: En. Sec. 11, Ch. 120, L. 1965; R.C.M. 1947, 67-2311.

70-23-505. Abandonment or waiver of use not to effect exemption. A unit owner may not be exempted from liability for the owner's contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the owner's unit.

History: En. Sec. 12, Ch. 120, L. 1965; R.C.M. 1947, 67-2312; amd. Sec. 2162, Ch. 56, L. 2009.

70-23-506. Compliance with bylaws, rules, and covenants required — action. Except as provided in 70-1-522, each unit owner shall comply with the bylaws and with the rules adopted pursuant to the bylaws and with the covenants, conditions, and restrictions in the declaration or in the deed to the owner's unit. Failure to comply with the bylaws, rules, covenants, conditions, and restrictions is grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner.

History: En. Sec. 13, Ch. 120, L. 1965; R.C.M. 1947, 67-2313; amd. Sec. 2163, Ch. 56, L. 2009; amd. Sec. 8, Ch. 307, L. 2009.

70-23-507. Restriction on covenants by association of unit owners. An association of unit owners shall abide by the provisions of 70-17-901.

History: En. Sec. 2, Ch. 339, L. 2019.

Cross-References

Homeowners' association restrictions — real property rights, 70-17-901.

Part 6
Conveyances, Liens, and Common Expenses

70-23-601. Contents of deed or lease of unit. Except as provided in 70-1-522, the deed or lease of a unit must contain:

(1) a description of the land, the name of the property, and the recording index numbers and date of recording of the declaration;

(2) the unit designation of the unit;

(3) the use for which the unit is intended;

(4) the percentages of undivided interest in the common elements appertaining to the unit;

(5) any further details the grantor and grantee or lessor and lessee may consider desirable.

History: En. Sec. 22, Ch. 120, L. 1965; amd. Sec. 13, Ch. 150, L. 1973; R.C.M. 1947, 67-2322; amd. Sec. 9, Ch. 307, L. 2009.

70-23-602. Liens to be satisfied or released at time of first conveyance. At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit, including the undivided interest of the unit in the common elements, shall be paid and satisfied of record or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: En. Sec. 23, Ch. 120, L. 1965; amd. Sec. 14, Ch. 150, L. 1973; R.C.M. 1947, 67-2323.

Cross-References

Mortgages, Title 71, ch. 1.

Liens, Title 71, ch. 3.

70-23-603. Lien allowable against unit not against the property. Subsequent to recording a declaration and while the property remains subject to this chapter, no lien shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

History: En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(1).

Cross-References

Construction liens, Title 71, ch. 3, part 5.

70-23-604. Construction lien — no effect on nonconsenting owner — exception. Labor performed or materials furnished with the consent or at the request of a unit owner or the owner's agent, contractor, or subcontractor may not be the basis for the filing of a construction lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent must be considered given by the owner of any unit in the case of emergency repairs performed or furnished with the consent or at the request of the manager.

History: En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(2); amd. Sec. 2164, Ch. 56, L. 2009.

Cross-References

Construction liens, Title 71, ch. 3, part 5.

70-23-605. Lien effective against two or more units — release from. If a lien becomes effective against two or more units, the owner of each unit subject to the lien has the right to have the owner's unit released from the lien by payment of the amount of the lien attributable to the owner's unit. The amount of the lien attributable to a unit and the payment required to satisfy a lien, in the absence of agreement, must be determined by application of the percentage established in the declaration. A partial payment, satisfaction, or discharge may not prevent the lienor from proceeding to enforce the lienor's rights against any unit and the undivided interest in the common element pertaining to a unit not released by a payment, satisfaction, or discharge.

History: En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(3); amd. Sec. 2165, Ch. 56, L. 2009.

70-23-606. Records of receipts and expenditures affecting common elements — inspection. (1) The manager shall keep detailed accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred.

(2) Such records and the vouchers authorizing the payments and receipts for payments shall be available for examination at the manager's place of business by the unit owners at convenient hours of weekdays.

History: En. Sec. 25, Ch. 120, L. 1965; R.C.M. 1947, 67-2325; amd. Sec. 2, Ch. 385, L. 1983.

70-23-607. Claim for common expenses — priority of lien — contents — recording. (1) Whenever an association of unit owners acting through its manager furnishes to a unit any services, labor, or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and the lien shall be prior to all other liens or encumbrances upon the unit except:

(a) tax and assessment liens; and

(b) a first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing:

(a) a true statement of the account due for such common expenses after deducting all just credits and offsets;

(b) the name of the owner of the unit or reputed owner, if known;

(c) a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under Title 71, chapter 3, part 5. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

History: En. Sec. 26, Ch. 120, L. 1965; R.C.M. 1947, 67-2326; amd. Sec. 15, Ch. 202, L. 1987.

70-23-608. Foreclosure of lien under claim for common expenses — action without foreclosure. (1) The proceedings to foreclose liens created by 70-23-607 shall conform as nearly as possible to the proceedings to foreclose liens created by Title 71, chapter 3, part 5. The lien may be enforced by the manager acting on behalf of the association of unit owners.

(2) An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

History: En. Sec. 27, Ch. 120, L. 1965; R.C.M. 1947, 67-2327; amd. Sec. 16, Ch. 202, L. 1987.

70-23-609. Foreclosure on unit — payment of rent — purchase of unit by manager. (1) In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent.

(2) The manager acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid on the unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

History: En. Sec. 28, Ch. 120, L. 1965; R.C.M. 1947, 67-2328; amd. Sec. 6, Ch. 84, L. 1983.

70-23-610. Purchaser at foreclosure sale not totally liable for prior common expenses. When the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, the purchaser and the purchaser's successors and assigns are not liable for any of the common expenses chargeable to the unit that became due prior to the acquisition of title to the unit by the purchaser. The unpaid share of common expenses is a common expense of all the unit owners, including the purchaser and the purchaser's successors and assigns.

History: En. Sec. 29, Ch. 120, L. 1965; R.C.M. 1947, 67-2329; amd. Sec. 2166, Ch. 56, L. 2009.

70-23-611. Joint liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the grantor for the grantor's proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee for the common expenses. However, upon request of a prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case is not liable for nor is the unit when conveyed subject to a lien filed for any unpaid charges against the grantor in excess of the amount set forth in the statement.

History: En. Sec. 30, Ch. 120, L. 1965; R.C.M. 1947, 67-2330; amd. Sec. 12, Ch. 115, L. 1979; amd. Sec. 2167, Ch. 56, L. 2009.

70-23-612. Insurance of building — premiums as common expenses. (1) The manager as trustee for the unit owners shall, if required by the declaration, by the bylaws, or by a majority of the unit owners, insure the building against loss or damage by fire and other hazards as required, without prejudice to the right of each unit owner to insure the owner's own unit for the owner's own benefit.

(2) The premiums for insurance on the building are common expenses.

History: En. Sec. 31, Ch. 120, L. 1965; R.C.M. 1947, 67-2331; amd. Sec. 2168, Ch. 56, L. 2009.

70-23-613. Disclosure by seller — seller to furnish documents — delay period. (1) Whenever a person, corporation, or other legal entity constitutes a majority of the unit owners, the seller or the sellers's agent, prior to signing any buy-sell agreement, shall give to any person purchasing or expressing a desire to purchase one of the project units notice that:

(a) the seller or other person constitutes a majority of the unit owners;

(b) any bylaws and administrative regulations governing the operation of the development and the association, as adopted by the association, have been adopted by the seller or other person acting as a majority of the unit owners; and

(c) any change in the bylaws or administrative regulations occurring while the seller or other person constitutes a majority of the unit owners may be made only with the approval of the seller or other person constituting a majority of unit owners.

(2) Upon the request of any person purchasing or expressing a desire to purchase one of the project units, the seller or the seller's agent shall furnish to that buyer or prospective buyer, prior to signing any buy-sell agreement, a copy of the Unit Ownership Act, the bylaws of the association, and any administrative regulations governing the operation of the project or the association.

(3) Any buy-sell agreement must provide that it is not effective until 72 hours after the prospective purchaser has received the documents required in subsection (2), and during that delay, the prospective purchaser may withdraw the offer without penalty.

History: En. Sec. 1, Ch. 385, L. 1983; amd. Sec. 2169, Ch. 56, L. 2009.

Part 7
Taxation and Exemptions
(Repealed)

70-23-701. Repealed. Sec. 4, Ch. 452, L. 1985.

History: En. Sec. 40, Ch. 120, L. 1965; amd. Sec. 42, Ch. 391, L. 1973; R.C.M. 1947, 67-2340.

70-23-702. Repealed. Sec. 4, Ch. 452, L. 1985.

History: En. Sec. 41, Ch. 120, L. 1965; R.C.M. 1947, 67-2341.

70-23-703. Repealed. Sec. 4, Ch. 452, L. 1985.

History: En. Sec. 42, Ch. 120, L. 1965; amd. Sec. 43, Ch. 391, L. 1973; R.C.M. 1947, 67-2342.

Part 8
Removal of Property
From Unit Ownership Act

70-23-801. Removal from chapter — recorded instrument — consent of lienholders. All of the unit owners may remove a property from the provisions of this chapter by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of this chapter.

History: En. Sec. 32, Ch. 120, L. 1965; R.C.M. 1947, 67-2332; amd. Sec. 3, Ch. 452, L. 1985.

70-23-802. Obsolete property — restoration or sale — removal from chapter. Ninety percent of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If 90% of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If 90% of the unit owners agree to sell the property, the property shall be considered removed from the provisions of this chapter.

History: En. Sec. 33, Ch. 120, L. 1965; R.C.M. 1947, 67-2333.

70-23-803. Damage to property — decision not to repair or rebuild — removal from chapter. If within 60 days after the date of the damage to or destruction of all or part of the property the association of unit owners does not decide to repair, reconstruct, or rebuild, the property shall be considered removed from the provisions of this chapter.

History: En. Sec. 34, Ch. 120, L. 1965; R.C.M. 1947, 67-2334.

70-23-804. Effect of removal — ownership in common — liens. If the property is removed from the provisions of this chapter, as provided by 70-23-801 through 70-23-803, the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

History: En. Sec. 35, Ch. 120, L. 1965; R.C.M. 1947, 67-2335.

70-23-805. Effect of removal — subject to partition — sale. If the property is removed from the provisions of this chapter, as provided in 70-23-801 through 70-23-803, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

History: En. Sec. 36, Ch. 120, L. 1965; R.C.M. 1947, 67-2336.

70-23-806. Removal no bar to resubmission. The removal of the property from the provisions of this chapter shall in no way bar its resubmission.

History: En. Sec. 37, Ch. 120, L. 1965; R.C.M. 1947, 67-2337.

Part 9
Actions and Process

70-23-901. Actions — service of process. (1) Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit.

(2) Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process.

(3) At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of $10 which shall be a taxable disbursement.

History: En. Sec. 38, Ch. 120, L. 1965; R.C.M. 1947, 67-2338.

70-23-902. Change of agent for service of process. If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in 70-23-901, it shall record an amendment to the declaration. The amendment must be certified by the presiding officer and the secretary of the association of unit owners and must state the name of the successor with the successor's residence or place of business as required by 70-23-301(7) and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

History: En. Sec. 39, Ch. 120, L. 1965; R.C.M. 1947, 67-2339; amd. Sec. 2170, Ch. 56, L. 2009.

Part 10
Enforcement and Penalty
(Repealed)

70-23-1001. Repealed. Sec. 3, Ch. 12, L. 1999.

History: En. Sec. 15, Ch. 150, L. 1973; R.C.M. 1947, 67-2343.

70-23-1002. Repealed. Sec. 3, Ch. 12, L. 1999.

History: En. Sec. 16, Ch. 150, L. 1973; R.C.M. 1947, 67-2344.

Part 11
Conversion of Condominium to Townhouse

70-23-1101. Conversion of condominium to townhouse. (1) A condominium may be converted to a townhome or townhouse only if:

(a) no other structure occupies the vertical air space above or below the unit's converted footprint;

(b) all condominium units subject to the recorded condominium declaration are simultaneously converted to townhome or townhouse units; and

(c) all of the unit owners owning units subject to the recorded condominium declaration consent to the conversion by executing and recording an instrument to that effect and adhering to the requirements of this section.

(2) If a condominium unit is affected by a lien, the unit owner shall obtain the lienholder's written consent to the conversion. If a lienholder does not provide written consent to the conversion, the unit owner may consent on behalf of the lienholder only according to the following provisions:

(a) The unit owner shall deliver by certified mail, return receipt requested, to each affected lienholder or its servicer at the address specified in the recorded trust indenture or mortgage, the address specified in the last recorded assignment of the trust indenture or the mortgage, if any, and the address specified in the last mailed request for loan payment the following documents:

(i) written notification pursuant to 70-23-1102;

(ii) a litigation guarantee, provided that:

(A) the form of the guarantee has been approved by the insurance commissioner and is issued by a licensed title insurance producer;

(B) the guarantee was ordered on the unit by the person required to give notice; and

(C) the guarantee lists the identities and addresses of the parties of record that have an interest in or a possible claim of an interest in the unit designed to disclose all parties of record that would otherwise be necessary to name in a quiet title action;

(iii) the proposed declaration and bylaws for the converted townhomes or townhouses that:

(A) provides that the percentage of the undivided interest of each unit owner in the common area is the same as the percentage of undivided interest owned by the owner in the common elements prior to the conversion; and

(B) provides for the continuation of the prior condominium association of unit owners as a townhouse association of unit owners;

(iv) a surveyed site plan that:

(A) includes the boundaries of the footprint beneath each converted unit and any limited common elements, such as decks, patios, and walkways, that will be included in the conversion; and

(B) depicts the corners and boundaries of the property underlying each converted townhome or townhouse; and

(v) an appraisal of the fair market value of the unit presuming that the unit had been converted to a townhome or townhouse for the purpose of establishing that the fair market value of the unit as a townhome or townhouse is not less than the fair market value of the existing condominium unit.

(b) Within 120 days of the date of the mailing in subsection (2)(a), a lienholder may object only by:

(i) recording its objection with the office of the county clerk and recorder of the county in which the unit is situated; and

(ii) mailing notification of its objection by certified mail, return receipt requested, to the unit owner at the address specified on the notice of intent received pursuant to 70-23-1102.

(c) If a lienholder does not register an objection pursuant to subsection (2)(b), the lienholder is considered to have consented to the conversion after the expiration of the 120-day period.

(3) (a) Except as provided in subsection (3)(b), if the unit subject to conversion is not affected by a lien or if each lienholder has consented or is considered to have consented to the conversion pursuant to this section, the conversion is effective upon the recording of all of the

following documents pertaining to each of the condominium units on the property with the office of the county clerk and recorder of the county in which the property is situated:

(i) an affidavit stating that the owner mailed the required notices of intent pursuant to 70-23-1102;

(ii) the declaration and bylaws, which must be substantially the same as the proposed declaration and bylaws specified in subsection (2)(a)(iii);

(iii) the surveyed site plan referenced in subsection (2)(a)(iv); and

(iv) evidence of the written consent of each affected lienholder. Sufficient evidence of written consent may be made through documents including but not limited to deeds, loan modifications, or the instrument reflecting a unit owner's consent on behalf of the lienholder as provided in 70-23-1103.

(b) If a lienholder is considered to have consented pursuant to subsection (2)(c), the unit owner may record the documents within 45 days after the expiration of the 120-day period provided in subsection (2)(b).

History: **En. Sec. 1, Ch. 323, L. 2019.**

70-23-1102. Notice of intent. (1) In addition to the documents required under 70-23-1101(2)(a), the notice of intent by a unit owner to a lienholder to convert a condominium to a townhome or townhouse must contain:

(a) the date;

(b) the name and address of the borrower;

(c) the name of the lienholder; and

(d) the name of the loan servicer if loan payments on a trust indenture or mortgage are collected by a loan servicer.

(2) The notice must be in substantially the following form:

"This notice, made the ... day of ......, ..., concerns the trust indenture or mortgage attached and described as follows:

Name of borrower: ....

Name of lienholder: ....

Name of loan servicer: ....

Recording information concerning the trust indenture or mortgage, including the entry number, book number, and page number: ....

Pursuant to the Unit Ownership Act contained in Title 70, chapter 23, MCA, the undersigned unit owner intends to convert a condominium affected by a mortgage or a trust indenture located at .... to a townhome or townhouse.

Unless the lienholder within 120 days of the date of this notice records its objection pursuant to 70-23-1101, MCA, with the office of the county clerk and recorder of the county in which the property is situated and mails notification of its objection by certified mail, return receipt requested, to the unit owner at the address specified on this notice, the unit owner will consent to the conversion on behalf of the lienholder for the mortgage or trust indenture described in this notice.

Pursuant to 70-23-1101(2)(a), MCA, the unit owner has included the following attachments:

(a) a copy of the recorded trust indenture or mortgage;

(b) a litigation guarantee;

(c) the proposed declaration and bylaws for the converted townhome or townhouses;

(d) a surveyed site plan; and

(e) an appraisal of the fair market value of each unit presuming that each unit had been converted to a townhome or townhouse.

.... (Signature of unit owner)
.... (Address of unit owner)"

History: **En. Sec. 2, Ch. 323, L. 2019.**

70-23-1103. Consent by unit owner on behalf of lienholder. The instrument reflecting a unit owner's consent on behalf of the lienholder to convert a secured property from a condominium to a townhome or townhouse must be in substantially the following form:

"(Unit owner) hereby consents on behalf of (name of lienholder), whose lien is evidenced by a trust indenture or mortgage recorded in .... County on ..... day of ...., ..., in book ...... at page ...... as entry number ...... to the following property in .... County being converted from a condominium described as .... to a townhome or townhouse described as ....

The undersigned unit owner certifies as follows:

(1) In accordance with the requirements of 70-23-1101 and 70-23-1102, MCA, the unit owner has delivered to the lienholder a notice of intent by a unit owner to a lienholder to convert a condominium to a townhome or townhouse.

(2) The lienholder has not affirmatively consented to the conversion, but the unit owner did not receive a notice of objection to the conversion from the lienholder within 120 days of the date of the notice of intent to convert a condominium to a townhome or townhouse as required to object to the conversion by 70-23-1101, MCA.

.... (Signature of unit owner)

.... (Notarization)"

History: En. Sec. 3, Ch. 323, L. 2019.

70-23-1104. Effect of conversion. Regarding a conversion pursuant to 70-23-1101, the following provisions apply:

(1) (a) A townhome or townhouse unit, including the structural elements and land beneath the unit as described in the surveyed site plan in 70-23-1101(2)(a)(iv), must be considered to be owned in fee simple by the unit owner.

(b) A portion of the land depicted as common area on the surveyed site plan described in 70-23-1101(2)(a)(iv) must be considered to be owned in common by all of the converted townhome or townhouse unit owners. The percentage of the undivided interest of each unit owner in the common area must be considered to be the same as the percentage of undivided interest owned by the owner in the common elements prior to the conversion.

(c) A lien affecting a townhome or townhouse unit is a lien against the fee simple interest of the unit owner in subsection (1)(a) and the undivided interest in the common area described in subsection (1)(b). The conversion, by itself, may not be considered to have an effect on the existing priorities of any liens concerning the converted townhome or townhouse units.

(2) The owners, lienholders, and title insurers may rely on the amended declaration's legal description of the unit provided by the surveyed site plan in 70-23-1101(2)(a)(iv) with regard to the future conveyance of individual townhome or townhouse units.

(3) Section 71-1-108 applies to the fee simple title to the land beneath a townhome or townhouse unit acquired by the mortgagor pursuant to the conversion.

(4) Because the amended declaration must provide for the continuation of the association of unit owners pursuant to 70-23-1101(2)(a)(iii)(B), the unit owners may not be required to form a new association of unit owners.

(5) The townhome or townhouse may not be considered removed from the provisions of this chapter solely by virtue of the conversion.

(6) If the conversion procedures in 70-23-1101 are followed, a unit owner or lienholder may not bring an action concerning the conversion, including a foreclosure based solely on the conversion, against any party associated with the conversion, including but not limited to the association of unit owners, title insurers, escrow providers, or lienholders. A person who brings an action concerning the conversion is liable for damages and attorney fees and costs to defend the action.

(7) If a foreclosure of a unit is conducted using the original condominium legal description in the trust indenture or mortgage, it will result in the foreclosure of the converted townhome or townhouse.

(8) A conversion does not constitute a removal pursuant to this chapter.

History: En. Sec. 4, Ch. 323, L. 2019.

70-23-1105. Nonapplicability — building codes — zoning regulations. Nothing in this part may be interpreted to modify, expand, or abrogate the applicability of state or local building codes or zoning regulations to a condominium, townhome, townhouse, or conversion.

History: En. Sec. 5, Ch. 323, L. 2019.

CHAPTER 24
RESIDENTIAL LANDLORD AND TENANT ACT OF 1977

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Chapter Cross-References

Residential property tax credit for elderly, 15-30-2337 through 15-30-2341.

Part 1
General Provisions

70-24-101. Short title. This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

History: En. 42-401 by Sec. 1, Ch. 313, L. 1977; R.C.M. 1947, 42-401.

70-24-102. Purposes — liberal construction to promote. (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are to:

(a) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;

(b) encourage landlords and tenants to maintain and improve the quality of housing; and

(c) create an exclusive regulatory standard throughout the state and its political subdivisions regarding landlord and tenant law.

History: En. 42-402 by Sec. 2, Ch. 313, L. 1977; R.C.M. 1947, 42-402; amd. Sec. 2, Ch. 572, L. 2023.

Cross-References

Local government with self-government powers prohibited from deviating from Montana Residential Landlord and Tenant Act of 1977, 7-1-111.

70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Abandon" means to give up possession of the premises unless the landlord does not accept abandonment or surrender as provided in 70-24-426 or unless the rental agreement has been terminated as provided by law.

(2) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(3) "Actual and reasonable cost" means the actual amount of expenses and labor incurred or expended and the reasonable amount of expenses and labor estimated to be incurred or expended.

(4) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(5) "Court" means the appropriate district court, small claims court, justice's court, or city court.

(6) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park and rents the mobile home, means the mobile home itself.

(7) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(8) "Guest" means a person staying with a tenant for a temporary period of time as defined in the rental agreement or, if not defined in the rental agreement, for a period of time no more than 7 days unless the tenant has received the landlord's written consent to a longer period of time.

(9) "Landlord" means:

(a) the owner of the dwelling unit or the building of which it is a part;

(b) a person who has written authorization from the owner to act as the owner's agent or assignee for purposes related to the premises or the rental agreement;

(c) a person who has written authorization from the owner to act as a manager of the premises for the purposes of the tenancy or the rental agreement; or

(d) a lessor who has written authorization from the owner of the premises to sublease the premises.

(10) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(11) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(12) "Person" includes an individual or organization.

(13) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(14) "Rent" means all payments to be made to the landlord, including rent, late fees, or other charges as agreed on in the rental agreement, except money paid as a security deposit.

(15) "Rent payment type" means all forms of payment types, including:

(a) cash;

(b) check;

(c) electronic; or

(d) other forms agreed on in the rental agreement that must comply with 70-24-203.

(16) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(17) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

(18) "Single-family residence" means a structure maintained and used as a single dwelling unit. A dwelling unit that shares one or more walls with another dwelling unit is a single-family residence if it has direct access to a street or thoroughfare and does not share heating facilities, hot water equipment, or any other essential facility or service with another dwelling unit.

(19) "Tenant" means:

(a) a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others; or

(b) a person who, with the written approval of the landlord and pursuant to the rental agreement, has a sublease agreement with the person who is entitled to occupy the dwelling unit under the rental agreement.

(20) "Unauthorized person or trespasser" means a person who:

(a) enters or remains after being asked to leave by the landlord and does not receive written permission by the landlord to remain on the premises;

(b) is in violation of 45-6-201;

(c) is in violation of 45-6-203; or

(d) is in violation of 70-27-102.

History: En. 42-409 by Sec. 9, Ch. 313, L. 1977; R.C.M. 1947, 42-409; amd. Sec. 2, Ch. 417, L. 1979; amd. Sec. 1, Ch. 222, L. 1993; amd. Sec. 2, Ch. 343, L. 1993; amd. Sec. 1, Ch. 470, L. 1993; amd. Sec. 1, Ch. 487, L. 1993; amd. Sec. 65, Ch. 18, L. 1995; amd. Sec. 1, Ch. 401, L. 1997; amd. Sec. 1, Ch. 267, L. 2007; amd. Sec. 1, Ch. 454, L. 2015; amd. Sec. 2, Ch. 536, L. 2021; amd. Sec. 1, Ch. 768, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 768, L. 2025. Amendment effective June 9, 2025.

70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service, including all housing provided by the Montana university system and other postsecondary institutions;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges, along with the use of the dwelling unit.

History: En. 42-408 by Sec. 8, Ch. 313, L. 1977; R.C.M. 1947, 42-408; amd. Sec. 1, Ch. 282, L. 2003.

70-24-105. Supplementary principles of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

History: En. 42-403 by Sec. 3, Ch. 313, L. 1977; R.C.M. 1947, 42-403.

Cross-References

Who may contract, 28-2-201.

Circumstances that affect validity of apparent consent, Title 28, ch. 2, part 4.

Agency, Title 28, ch. 10.

70-24-106. Construction against implicit repeal. No part of this chapter is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: En. 42-404 by Sec. 4, Ch. 313, L. 1977; R.C.M. 1947, 42-404.

70-24-107. Territorial application. This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: En. 42-407 by Sec. 7, Ch. 313, L. 1977; R.C.M. 1947, 42-407.

70-24-108. What constitutes notice. (1) A person has notice of a fact if any of the following is true:

(a) the person has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made;

(c) in the case of a tenant or a landlord, it is transmitted to an electronic mail address provided by the tenant or the landlord in the rental agreement. Notice by electronic mail is complete on receipt of a read receipt generated by an electronic mail system or an electronic mail reply other than an automatically generated electronic mail reply.

(d) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the person at the place indicated by the person as the place for receipt of the communication or, in the absence of a designation, to the person's last-known address. If notice is made with a certificate of mailing or by certified mail, service of the notice is considered to have been made on the date 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised reasonable diligence.

History: **En. 42-412 by Sec. 12, Ch. 313, L. 1977; R.C.M. 1947, 42-412; amd. Sec. 2, Ch. 222, L. 1993; amd. Sec. 1, Ch. 290, L. 2017.**

70-24-109. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History: **En. 42-410 by Sec. 10, Ch. 313, L. 1977; R.C.M. 1947, 42-410.**

70-24-110. Landlords and tenants — no firearm prohibition allowed. A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

History: **En. Sec. 6, Ch. 332, L. 2009.**

70-24-111. Notice of no contact. (1) Except as provided in 45-5-209, a notice of no contact to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord may only be authorized pursuant to an order of no contact issued by a court of competent jurisdiction if the person receiving the notice of no contact is acting in accordance with the provisions of Title 70, chapter 24, 25, or 33.

(2) Except as provided by 45-5-209 or this section, or if issued pursuant to an order of protection issued by a court of competent jurisdiction, a notice of no contact to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord is invalid.

History: **En. Sec. 1, Ch. 297, L. 2015.**

70-24-112. Application of security deposit laws. The provisions of this chapter are cohesive with the provisions of Title 70, chapter 25, and the two chapters must be read in conjunction when considering, with regards to the Montana Residential Landlord and Tenant Act of 1977, the rights and duties of landlords and tenants, and the availability of remedies and judicial relief to landlords and tenants.

History: **En. Sec. 1, Ch. 235, L. 2021.**

70-24-113. Removal of unauthorized person or trespasser — indemnification for providing false information to law enforcement. (1) An unauthorized person or trespasser has no legal right to occupy, enter, or trespass on a premises. A person who cannot produce authorization allowing the person to occupy a premises is an unauthorized person or trespasser for the purpose of this section and may be removed from the premises immediately by law enforcement.

(2) For the purposes of this section, authorization includes:

(a) a written rental agreement entitling the person to occupy the premises;

(b) written or verbal authorization from the landlord; or

(c) written or verbal authorization from a tenant if the person is a guest of the tenant.

(3) For the purposes of this section, verbal authorization is valid only if it is verified by the individual or entity entitled to give it under subsection (2)(b) or (2)(c).

(4) A property owner or authorized agent may request law enforcement to remove an unauthorized person or trespasser pursuant to this section.

(5) The property owner may request law enforcement to stand by to keep the peace while changing locks and removing personal property belonging to the unlawful occupant.

(6) A property owner or authorized agent who knowingly provides false information in a request under subsection (4) shall indemnify the law enforcement agency and its agents for any damages awarded against the law enforcement agency or its agents for their good faith conduct based on the request.

History: **En. Sec. 1, Ch. 536, L. 2021; amd. Sec. 3, Ch. 179, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 179, L. 2025. Amendment effective October 1, 2025.

70-24-114. Emotional support animals — documentation. (1) A tenant with a disability or a disability-related need for an emotional support animal may request and be approved by a landlord to keep an emotional support animal as a reasonable accommodation in housing.

(2) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) deny a reasonable accommodation request for an emotional support animal if the animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property that cannot be reduced or eliminated by another reasonable accommodation;

(b) if a tenant's disability-related need for an emotional support animal is not readily apparent, request supporting information that reasonably supports the tenant's need for the particular emotional support animal being requested. Supporting information must include:

(i) information from a health care practitioner who has personal knowledge of the tenant's disability and is acting within the scope of the practitioner's practice that identifies the particular assistance or therapeutic emotional support provided by the specific animal. Information submitted under this subsection (2)(b)(i) must include the effective date, license number, and type of professional license held by the health care practitioner; or

(ii) information from any other source that the landlord determines to be reliable in accordance with the federal Fair Housing Act and Title 49, chapter 2; and

(c) require proof of compliance with state and local licensure and vaccination requirements for each emotional support animal.

(3) If a tenant requests to keep more than one emotional support animal, information for each emotional support animal must be provided pursuant to subsection (2).

(4) A landlord:

(a) may not request information under this section that discloses a diagnosis or severity of a tenant's disability or any medical records relating to the disability, but a tenant may voluntarily disclose such information or medical records to the landlord at the tenant's discretion; and

(b) shall issue a written determination after receiving supplemental information required in subsection (2) and notice the determination pursuant to 70-24-108.

(5) An emotional support animal registration of any kind, including but not limited to an identification card, patch, certificate, or similar registration obtained electronically or in person, is not, by itself, sufficient information to reliably establish that a tenant has a disability-related need for an emotional support animal.

(6) A tenant with a disability-related need for an emotional support animal is liable for any damage done to the premises or to another person on the premises by the tenant's emotional support animal.

(7) A health care practitioner may be subject to disciplinary action from the health care practitioner's licensing board for a violation of this section.

(8) This section does not apply to a service animal as defined in 49-4-203.

(9) Nothing in this section may be construed to restrict existing federal law and state law related to a person's right to a reasonable accommodation and equal access to housing, including but not limited to the federal Fair Housing Act, the federal Americans with Disabilities Act of 1990, or Title 49, chapter 2.

(10) As used in this section, the following definitions apply:

(a) "Emotional support animal" means an animal that a health care practitioner has determined provides emotional, cognitive, or other similar support to an individual with a disability and does not need to be trained or certified. The term does not include service animals as defined in 49-4-203.

(b) "Health care practitioner" means a mental health professional as defined in 53-21-102 who is licensed to practice in this state and who:

(i) has established a client-provider relationship with a tenant at least 30 days prior to providing supporting information requested from a landlord regarding the tenant's need for an emotional support animal;

(ii) completes a clinical evaluation of a tenant regarding the need for an emotional support animal; and

(iii) is acting within the scope of practice of the person's license or certificate.

History: En. Sec. 1, Ch. 284, L. 2023; amd. Sec. 1, Ch. 360, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 360, L. 2025. Amendment effective October 1, 2025.

Part 2
Rental Agreements

70-24-201. Rental agreement — terms and conditions. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord's address or using electronic funds transfer to an account designated for the payment of rent by the landlord;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day;

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month; and

(f) if either party terminates the rental agreement without cause prior to the expiration date of the lease term, the aggrieved party is entitled to monetary damages up to 1 month's rent or an amount that is agreed on in the rental agreement, which may not exceed 1 month's rent. Landlords shall follow 70-24-426(3) and are entitled to rent from defaulting tenants up to the date a new tenancy starts or the date the rental agreement term expires.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2).

(4) A landlord may not charge an additional fee based on rent payment type except to recoup an electronic bank fee incurred for electronic payment.

History: En. 42-413 by Sec. 13, Ch. 313, L. 1977; R.C.M. 1947, 42-413; amd. Sec. 1, Ch. 155, L. 2017; amd. Sec. 3, Ch. 536, L. 2021; amd. Sec. 2, Ch. 768, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 768, L. 2025. Amendment effective June 9, 2025.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

70-24-202. Prohibited provisions in rental agreements. A rental agreement may not provide that a party:

(1) agrees to waive or forego rights or remedies under this chapter;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney fees connected with that liability; or

(4) must provide an electronic mail address as a condition of entering into the agreement. However, a party may voluntarily provide an electronic mail address if the agreement contains a provision allowing a party to elect to receive notice by electronic mail.

History: En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(1); amd. Sec. 2, Ch. 290, L. 2017.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

70-24-203. Agreement not to permit receipt of rent free of obligation. A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with 70-24-303.

History: En. 42-416 by Sec. 16, Ch. 313, L. 1977; R.C.M. 1947, 42-416.

70-24-204. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement that has already been signed by the tenant and delivered to the landlord, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord to the tenant.

(2) If the tenant does not sign and deliver to the landlord a written rental agreement that has already been signed by the landlord and delivered to the tenant, acceptance of possession of the premises and payment of rent without reservation by the tenant gives the rental agreement the same effect as if it had been signed and delivered by the tenant to the landlord.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

History: En. 42-414 by Sec. 14, Ch. 313, L. 1977; R.C.M. 1947, 42-414; amd. Sec. 2171, Ch. 56, L. 2009; amd. Sec. 1, Ch. 220, L. 2017.

70-24-205. Extension of written rental agreements. If the landlord and tenant fail to establish a default extension period for the lease in the rental agreement and neither party gives a 30-day written notice to the other to terminate the tenancy before the rental agreement's original termination date, the tenancy continues on a month-to-month basis.

History: En. Sec. 1, Ch. 138, L. 2009; amd. Sec. 2, Ch. 155, L. 2017.

Part 3
Rights and Duties of the Parties

70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section must be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

History: En. 42-418 by Sec. 18, Ch. 313, L. 1977; R.C.M. 1947, 42-418; amd. Sec. 2172, Ch. 56, L. 2009.

70-24-302. Landlord to deliver possession of dwelling unit. (1) At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

History: En. 42-419 by Sec. 19, Ch. 313, L. 1977; R.C.M. 1947, 42-419; amd. Sec. 3, Ch. 222, L. 1993.

70-24-303. *(Temporary)* **Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) Subject to 27-1-1603, a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition, except when it is the tenant's responsibility to maintain the dwelling unit pursuant to 70-24-321;

(c) shall keep all common areas of the premises in a clean and safe condition;

(d) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(e) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(f) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(g) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(g), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(g), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(g). *(Terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

70-24-303. *(Effective January 2, 2031)* **Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) A landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition, except when it is the tenant's responsibility to maintain the dwelling unit pursuant to 70-24-321;

(c) shall keep all common areas of the premises in a clean and safe condition;

(d) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(e) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(f) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(g) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(g), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(g), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(g).

History: En. 42-420 by Sec. 20, Ch. 313, L. 1977; R.C.M. 1947, 42-420; amd. Sec. 1, Ch. 567, L. 1989; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 2, Ch. 401, L. 1997; amd. Sec. 1, Ch. 408, L. 2003; amd. Sec. 2, Ch. 43, L. 2009; amd. Sec. 1, Ch. 343, L. 2013; amd. Sec. 10, Ch. 2, L. 2021; amd. Sec. 4, Ch. 536, L. 2021.

70-24-304. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. The landlord remains liable to the tenant for all security recoverable by the tenant pursuant to Title 70, chapter 25, and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the manager's management.

History: En. 42-421 by Sec. 21, Ch. 313, L. 1977; R.C.M. 1947, 42-421; amd. Sec. 2173, Ch. 56, L. 2009.

70-24-305. Transfer of premises by tenant. A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

History: En. Sec. 4, Ch. 222, L. 1993; amd. Sec. 2, Ch. 267, L. 2007.

70-24-306 through 70-24-310 reserved.

70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time that the tenant enters into the rental agreement or when it is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of the tenant's bargain, it is not valid until 7 days after written notice to the tenant in the case of a week to week tenancy or 30 days' written notice in the case of tenancies from month to month.

History: En. 42-423 by Sec. 23, Ch. 313, L. 1977; R.C.M. 1947, 42-423; amd. Sec. 3, Ch. 470, L. 1993; amd. Sec. 5, Ch. 487, L. 1993; amd. Sec. 1, Ch. 389, L. 1995.

70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in the case of an emergency.

(3) (a) A landlord may not abuse the right of access or use it to harass the tenant. Except in the case of an emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(b) For the purposes of this subsection (3), in addition to the provisions of 70-24-108, a tenant has notice of the intent to enter if the landlord conspicuously posts the landlord's intent to enter on the main entry door of the dwelling unit.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter.

History: En. 42-424 by Sec. 24, Ch. 313, L. 1977; R.C.M. 1947, 42-424; amd. Sec. 5, Ch. 222, L. 1993; amd. Sec. 2174, Ch. 56, L. 2009; amd. Sec. 5, Ch. 536, L. 2021.

70-24-313. Repealed. Sec. 52, Ch. 267, L. 2007.

History: En. Sec. 2, Ch. 487, L. 1993.

70-24-314. Resident associations — meetings. The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings.

History: En. Sec. 3, Ch. 487, L. 1993; amd. Sec. 3, Ch. 267, L. 2007.

70-24-315. Repealed. Sec. 52, Ch. 267, L. 2007.

History: En. Sec. 4, Ch. 487, L. 1993.

70-24-316 through 70-24-320 reserved.

70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner, that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining room, in a reasonable manner, considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, including but not limited to any of the following activities:

(a) criminal production or manufacture of dangerous drugs as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory as prohibited by 45-9-132;

(c) gang-related activities as prohibited by Title 45, chapter 8, part 4;

(d) unlawful possession of a firearm, explosive, or hazardous or toxic substance; or

(e) any activity that is otherwise prohibited by law.

History: En. 42-422 by Sec. 22, Ch. 313, L. 1977; R.C.M. 1947, 42-422; amd. Sec. 6, Ch. 222, L. 1993; amd. Sec. 2, Ch. 408, L. 2003; amd. Sec. 2, Ch. 343, L. 2013.

70-24-322. Tenant to occupy as dwelling unit only — extended absence. (1) Unless otherwise agreed, a tenant shall occupy the tenant's dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

History: En. 42-425 by Sec. 25, Ch. 313, L. 1977; R.C.M. 1947, 42-425; amd. Sec. 2175, Ch. 56, L. 2009.

Part 4
Remedies

70-24-401. Administration of remedies — enforcement. (1) The remedies provided by this chapter must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages. The aggrieved party may include a reasonable charge for the party's labor.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect. Nothing in this chapter prohibits the assignment of a right or the claim of a right by either landlord or tenant. The landlord's or tenant's defenses and obligations may not be affected by an assignment.

(3) Rules and regulations that are not a part of this chapter and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

History: En. 42-405 by Sec. 5, Ch. 313, L. 1977; R.C.M. 1947, 42-405; amd. Sec. 7, Ch. 222, L. 1993; amd. Sec. 6, Ch. 536, L. 2021.

70-24-402. Settlement of disputed claim or right. A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

History: En. 42-406 by Sec. 6, Ch. 313, L. 1977; R.C.M. 1947, 42-406.

70-24-403. Prohibited provision in rental agreement — unenforceability — damages. (1) A provision prohibited by 70-24-202 that is included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by the party to be prohibited, the other party may recover, in addition to the other party's actual damages, an amount up to 3 months' periodic rent.

History: En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(2); amd. Sec. 2176, Ch. 56, L. 2009.

70-24-404. Unconscionability — court discretion to refuse enforcement. (1) Except as provided in subsection (2), if the court, as a matter of law, finds that:

(a) a rental agreement or any provision of the rental agreement is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental agreement that:

(a) a tenant maintain a dwelling unit in accordance with 70-24-321; or

(b) a landlord maintain the premises in accordance with 70-24-303.

(3) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

History: En. 42-411 by Sec. 11, Ch. 313, L. 1977; R.C.M. 1947, 42-411; amd. Sec. 1, Ch. 236, L. 2021.

70-24-405. Failure of landlord to deliver possession — tenant's remedies. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord, and upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by the tenant.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

History: En. 42-427 by Sec. 27, Ch. 313, L. 1977; R.C.M. 1947, 42-427; amd. Sec. 2177, Ch. 56, L. 2009.

70-24-406. Failure of landlord to maintain premises — tenant's remedies. (1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by the tenant, a member of the tenant's family, or other persons on the premises with the tenant's consent.

(b) make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

History: **En. 42-426 by Sec. 26, Ch. 313, L. 1977; R.C.M. 1947, 42-426; amd. Sec. 8, Ch. 222, L. 1993.**

70-24-407. Damages for minor violations by landlord. If the landlord fails to comply with the rental agreement or 70-24-303 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 70-24-406(2).

History: **En. 42-428 by Sec. 28, Ch. 313, L. 1977; R.C.M. 1947, 42-428.**

70-24-408. Purposeful or negligent failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, the tenant may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until the tenant has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent.

History: **En. 42-429 by Sec. 29, Ch. 313, L. 1977; R.C.M. 1947, 42-429; amd. Sec. 2178, Ch. 56, L. 2009.**

70-24-409. Fire or casualty damage — rights of tenant. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant or the tenant's family or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to Title 70, chapter 25, and all prepaid rent. Accounting for rent in the event of termination or apportionment must be made as of the date of the fire or casualty.

History: **En. 42-431 by Sec. 31, Ch. 313, L. 1977; R.C.M. 1947, 42-431; amd. Sec. 2179, Ch. 56, L. 2009.**

70-24-410. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

History: **En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(2).**

70-24-411. Unlawful ouster, exclusion, or diminution of service — tenant's remedies. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent.

History: **En. 42-432 by Sec. 32, Ch. 313, L. 1977; R.C.M. 1947, 42-432.**

70-24-412 through 70-24-420 reserved.

70-24-421. Action for nonpayment of rent — tenant's counterclaim. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount the tenant may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed must be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment must be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) but is not required to pay any rent into court.

History: **En. 42-430 by Sec. 30, Ch. 313, L. 1977; R.C.M. 1947, 42-430; amd. Sec. 2180, Ch. 56, L. 2009.**

70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance, that the rental agreement will terminate, and that the tenant shall vacate the premises on a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates and the tenant shall vacate the premises as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or written approval of the landlord and the tenant remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b), (1)(c), or (1)(f), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

(f) If the noncompliance is from verbal abuse of the landlord by a tenant, the landlord may terminate the rental agreement on giving 3 days' written notice. If the tenant adequately remedies the noncompliance, the rental agreement does not terminate.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement, and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2), and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured in violation of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3), and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(7) The landlord is not bound by this section in the event that the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441.

History: En. 42-433 by Sec. 33, Ch. 313, L. 1977; R.C.M. 1947, 42-433; amd. Sec. 1, Ch. 221, L. 1983; amd. Sec. 1, Ch. 232, L. 1985; amd. Sec. 1, Ch. 547, L. 1987; amd. Sec. 9, Ch. 222, L. 1993; amd. Sec. 2, Ch. 389, L. 1995; amd. Sec. 1, Ch. 456, L. 2001; amd. Sec. 3, Ch. 408, L. 2003; amd. Sec. 4, Ch. 267, L. 2007; amd. Sec. 3, Ch. 343, L. 2013; amd. Sec. 2, Ch. 236, L. 2021; amd. Sec. 7, Ch. 536, L. 2021.

Cross-References

Mobile home defined for tax purposes, 15-1-101.

70-24-423. Waiver of landlord's right to terminate for breach. Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent. Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right. The acceptance of partial payment of rent due does not constitute a waiver of any right, including rent due.

History: En. 42-436 by Sec. 36, Ch. 313, L. 1977; R.C.M. 1947, 42-436; amd. Sec. 1, Ch. 132, L. 1997; amd. Sec. 3, Ch. 236, L. 2021.

70-24-424. Refusal of access — landlord's remedies. (1) If the tenant refuses to allow lawful access, the landlord may issue a 24-hour notice to correct or obtain immediate injunctive relief to compel access. In either case, the landlord may recover actual damages. If the 24-hour notice to correct is not remedied, the landlord may issue a 3-day notice to terminate the rental agreement.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by 70-24-312(5), the landlord may issue a 24-hour notice to correct or obtain immediate injunctive relief. If the 24-hour notice to correct is not remedied, the landlord may issue a 3-day notice to terminate the rental agreement.

History: En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(1); amd. Sec. 10, Ch. 222, L. 1993; amd. Sec. 1, Ch. 715, L. 2023.

70-24-425. Failure of tenant to maintain dwelling — landlord's right to enter and repair. If there is noncompliance by the tenant with 70-24-321 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

History: En. 42-434 by Sec. 34, Ch. 313, L. 1977; R.C.M. 1947, 42-434.

70-24-426. Remedies for absence or abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-24-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

History: En. 42-435 by Sec. 35, Ch. 313, L. 1977; R.C.M. 1947, 42-435.

70-24-427. Landlord's remedies after termination — action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession, rent, and actual damages for any breach of the rental agreement.

(2) (a) Except as provided in subsection (2)(b), an action filed pursuant to subsection (1) in a court must be heard within 10 business days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons. If the action is appealed to the district court, the hearing must be held within 10 business days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the case is transmitted to the district court.

(b) A hearing for damages for any breach of the rental agreement must be held within 45 days after the claim of possession and rent has been adjudicated.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ of possession and a writ of assistance immediately. The writ of assistance must be executed by the sheriff:

(a) within 5 business days of the sheriff receiving the writ of assistance, excluding of the date of receipt by the sheriff; or

(b) at a time no more than 5 business days after the sheriff receives the writ of assistance or as otherwise agreed to by the landlord and the sheriff.

History: En. 42-438 by Sec. 38, Ch. 313, L. 1977; R.C.M. 1947, 42-438; amd. Sec. 1, Ch. 585, L. 1993; amd. Sec. 4, Ch. 408, L. 2003; amd. Sec. 4, Ch. 343, L. 2013; amd. Sec. 2, Ch. 454, L. 2015; amd. Sec. 1, Ch. 517, L. 2021; amd. Sec. 2, Ch. 715, L. 2023.

70-24-428. Landlord's recovery of possession limited. Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services.

History: En. 42-439 by Sec. 39, Ch. 313, L. 1977; R.C.M. 1947, 42-439.

70-24-429. Holdover remedies — consent to continued occupancy — tenant's response to service in action for possession. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession.

(2) If the term is longer than month-to-month and the landlord terminates the rental agreement with cause and the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(3) If the term of the rental is month-to-month and the landlord terminates the rental agreement without cause and issues a lawful 30-day notice and the tenant remains in the rental unit after the termination date, then the holdover is purposeful and the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(4) In an action for possession or unlawful holdover, the provisions of the Montana Justice and City Court Rules of Civil Procedure, Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 5 business days after service of summons and complaint, exclusive of the date of service.

(5) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(3); amd. Sec. 1, Ch. 176, L. 1993; amd. Sec. 3, Ch. 715, L. 2023.

70-24-430. Disposition of personal property abandoned by tenant after termination. (1) (a) If a tenancy terminates by court order, the personal property is considered abandoned and the landlord may immediately dispose of the personal property as allowed by law.

(b) If a tenancy terminates in any manner other than by court order and the landlord has clear and convincing evidence that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 48 hours has elapsed since the landlord obtained that evidence, the landlord may immediately remove the abandoned property from the premises and immediately dispose of any trash or personal property that is hazardous, perishable, or valueless.

(c) An item that is clearly labeled "rent to own" or "leased" or likewise identified may be discarded only with confirmation from the lessor that the item does not have a lien, provided that the lessor can be easily identified from the label and the landlord makes a reasonable effort to contact the lessor.

(d) For the purposes of this subsection (1), the following definitions apply:

(i) "Hazardous" means an item that is potentially or actually flammable or a biohazard or an item otherwise capable of inflicting personal harm or injury.

(ii) "Perishable" means any item requiring refrigeration or any food item with a marked expiration date.

(iii) "Valueless" means any item that has an insubstantial resale value but does not include personal photos, jewelry, or other small items that are irreplaceable.

(2) The landlord shall inventory and store all abandoned personal property of the tenant that the landlord reasonably believes is valuable in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsection (2), the landlord shall make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping by sending a notice with a certificate of mailing or by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 10 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property whether of value or not is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes.

(9) The landlord shall ensure that the terms of this section are included in plain and understandable language as a notification upon termination of the lease or rental agreement.

History: **En. 42-437 by Sec. 37, Ch. 313, L. 1977; R.C.M. 1947, 42-437; amd. Sec. 1, Ch. 483, L. 1985; amd. Sec. 3, Ch. 401, L. 1997; amd. Sec. 152, Ch. 305, L. 1999; amd. Sec. 1, Ch. 93, L. 2013; amd. Sec. 24, Ch. 123, L. 2013; amd. Sec. 8, Ch. 536, L. 2021.**

70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact is required to find the existence of the fact presumed unless and until evidence is introduced that would support a finding of its nonexistence.

(4) Subsections (1), (2), and (3) do not prevent a landlord from bringing an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).

History: **En. 42-442 by Sec. 42, Ch. 313, L. 1977; R.C.M. 1947, 42-442; amd. Sec. 6, Ch. 487, L. 1993; amd. Sec. 5, Ch. 267, L. 2007.**

70-24-432. Repealed. Sec. 52, Ch. 267, L. 2007.

History: **En. Sec. 1, Ch. 483, L. 1999; amd. Sec. 3, Ch. 483, L. 1999; amd. Sec. 1, Ch. 90, L. 2005.**

70-24-433 through 70-24-435 reserved.

70-24-436. Repealed. Sec. 52, Ch. 267, L. 2007.

History: **En. Sec. 2, Ch. 470, L. 1993; amd. Sec. 3, Ch. 389, L. 1995; amd. Sec. 4, Ch. 401, L. 1997; amd. Sec. 2, Ch. 456, L. 2001; amd. Sec. 119, Ch. 114, L. 2003.**

70-24-437 through 70-24-440 reserved.

70-24-441. Termination by landlord or tenant. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

History: **En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(1), (2); amd. Sec. 3, Ch. 456, L. 2001; amd. Sec. 6, Ch. 267, L. 2007.**

70-24-442. Attorney fees — costs. (1) In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

(2) As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

History: En. 42-417 by Sec. 17, Ch. 313, L. 1977; R.C.M. 1947, 42-417.

Cross-References

Civil procedure — costs, Title 25, ch. 10.

CHAPTER 25
RESIDENTIAL TENANTS' SECURITY DEPOSITS

Part 1 — General Provisions

70-25-101. Definitions.
70-25-102. Application of chapter.
70-25-103. Waivers and contrary provisions invalid.

Part 2 — Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom.
70-25-202. List of damages and refund — delivery to departing tenant.
70-25-203. Failure to provide list — forfeiture of deduction rights.
70-25-204. Wrongful withholding of security deposit — action.
70-25-205. Failure of departing tenant to furnish new address.
70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.

Part 1
General Provisions

70-25-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or the owner's selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying the leasehold premises or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident to a leasehold agreement requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit must be presumed to be a security deposit. A fee or charge for cleaning and damages, no matter how designated, is presumed to be a security deposit.

History: En. 42-301 by Sec. 1, Ch. 219, L. 1974; amd. Sec. 1, Ch. 297, L. 1977; R.C.M. 1947, 42-301; amd. Sec. 1, Ch. 505, L. 1991; amd. Sec. 2181, Ch. 56, L. 2009.

70-25-102. Application of chapter. This chapter applies to all rentals of dwellings subject to Title 70, chapter 24, or Title 70, chapter 33.

History: En. 42-302 by Sec. 2, Ch. 219, L. 1974; R.C.M. 1947, 42-302; amd. Sec. 1, Ch. 383, L. 2023.

70-25-103. Waivers and contrary provisions invalid. Any provision of a leasehold agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid.

History: En. 42-309 by Sec. 9, Ch. 219, L. 1974; R.C.M. 1947, 42-309; amd. Sec. 13, Ch. 115, L. 1979.

Part 2
Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom. (1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, late charges, utilities, penalties due under lease provisions, and other money owing to the landlord at the time of deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses, including a reasonable charge for the landlord's labor.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) (a) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time that the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the additional amount and type or types of cleaning that need to be done by the tenant to bring the premises back to its condition at the time of its renting.

(b) After the delivery of the notice pursuant to 70-24-108 or 70-33-106, the tenant has 24 hours to complete the required cleaning, unless the rental agreement is already terminated pursuant to 70-24-427 or 70-33-427 and the landlord has a pending claim filed in court. If the notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing.

(c) A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit, or the landlord may leave a copy of the notice in a conspicuous location in the rental unit and notify the tenant by e-mail, phone, or text, and notice is considered delivered.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section.

History: En. 42-303 by Sec. 3, Ch. 219, L. 1974; amd. Sec. 2, Ch. 297, L. 1977; R.C.M. 1947, 42-303; amd. Sec. 14, Ch. 115, L. 1979; amd. Sec. 2, Ch. 505, L. 1991; amd. Sec. 1, Ch. 342, L. 1993; amd. Sec. 4, Ch. 389, L. 1995; amd. Sec. 5, Ch. 401, L. 1997; amd. Sec. 9, Ch. 536, L. 2021; amd. Sec. 2, Ch. 383, L. 2023; amd. Sec. 1, Ch. 656, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 656, L. 2025. Amendment effective May 12, 2025.

70-25-202. List of damages and refund — delivery to departing tenant. (1) Except as provided in subsection (2):

(a) (i) Each landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, with regard to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of the list must be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201.

(ii) Delivery of the refund must be accomplished by different forms of payment that include electronic fund transfers, cash, check, or other forms of refund, or by mailing the security deposit to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address. Delivery of the written list must be noticed pursuant to 70-24-108 or 70-33-106.

(b) (i) If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days.

(ii) Delivery of the refund must be accomplished by different forms of payment that include electronic fund transfers, cash, check, or other forms of refund, or by mailing the security deposit to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address. Delivery of the written list must be noticed pursuant to 70-24-108 and 70-33-106.

(c) It is not a wrongful withholding of security deposit funds if the landlord mails the funds to the last-known address of a tenant who has departed and the tenant does not receive the funds because the tenant has not given the landlord the tenant's new address, but the landlord remains liable to the tenant for the amount due the tenant.

(2) This section does not apply if a rental agreement is terminated pursuant to 70-24-427 or 70-33-427 and the landlord has a pending claim filed in court.

History: En. 42-304 by Sec. 4, Ch. 219, L. 1974; amd. Sec. 3, Ch. 297, L. 1977; R.C.M. 1947, 42-304; amd. Sec. 3, Ch. 505, L. 1991; amd. Sec. 1, Ch. 241, L. 2001; amd. Sec. 3, Ch. 383, L. 2023; amd. Sec. 2, Ch. 656, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 656, L. 2025. Amendment effective May 12, 2025.

70-25-203. Failure to provide list — forfeiture of deduction rights. Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by 70-25-202 shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

History: En. 42-305 by Sec. 5, Ch. 219, L. 1974; amd. Sec. 4, Ch. 297, L. 1977; R.C.M. 1947, 42-305.

70-25-204. Wrongful withholding of security deposit — action. (1) A person who wrongfully withholds a residential property security deposit or any portion of the deposit is liable in damages to the tenant in a civil action for an amount equal to the sum determined to have been wrongfully withheld or deducted. The attorney fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises is on the landlord.

(2) An action may not be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or the landlord's agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy;

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises; or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant.

History: En. 42-306 by Sec. 6, Ch. 219, L. 1974; R.C.M. 1947, 42-306; amd. Sec. 4, Ch. 505, L. 1991; amd. Sec. 2, Ch. 342, L. 1993.

70-25-205. Failure of departing tenant to furnish new address. Failure by the departing tenant to provide the landlord with a new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, does not bar the tenant from recovering the amount owing to the tenant by the landlord.

History: En. 42-307 by Sec. 7, Ch. 219, L. 1974; R.C.M. 1947, 42-307; amd. Sec. 3, Ch. 342, L. 1993; amd. Sec. 2, Ch. 241, L. 2001.

70-25-206. Landlord to furnish statement of condition of premises at beginning of lease. (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, in conjunction with execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or the landlord's agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating the fact; and

(c) the signature of the landlord or the landlord's agent.

(3) A person engaged in the rental of property for residential purposes who fails to furnish a tenant, in conjunction with the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement is barred from recovering any sum for damage to or cleaning of the leasehold premises unless the person can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees.

History: En. 42-308 by Sec. 8, Ch. 219, L. 1974; amd. Sec. 5, Ch. 297, L. 1977; R.C.M. 1947, 42-308; amd. Sec. 5, Ch. 505, L. 1991; amd. Sec. 4, Ch. 342, L. 1993.

CHAPTER 26
LANDLORD AND TENANT
RESIDENTIAL AND COMMERCIAL

Part 1 — Residential and Commercial

70-26-101. Letting of parts of rooms prohibited.
70-26-102. Transferee of rental property to have same rights as transferor.
70-26-103. Attornment of tenant to stranger void.
70-26-104. Notice of action by third person served on tenant — duty to inform landlord.
70-26-105. Assignee of lessee — remedies of lessor against.
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70-26-110. Lease of city lot for over 75 years void.

Part 2 — Commercial

70-26-201. Term of lease when none specified.
70-26-202. Rent — when payable.
70-26-203. Failure of lessor to repair — lessee's remedies.
70-26-204. Renewal of lease by lessee's continued possession.
70-26-205. Notice required to terminate lease.
70-26-206. Rights of tenant for years or at will.
70-26-207. Repealed.

Part 1
Residential and Commercial

70-26-101. Letting of parts of rooms prohibited. A person who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a landlord lets a room as a dwelling for more than one family, the person to whom the landlord first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building under the same landlord is relieved from all obligation to pay rent to the landlord while the double letting of any room continues.

History: En. Sec. 2629, Civ. C. 1895; re-en. Sec. 5235, Rev. C. 1907; re-en. Sec. 7750, R.C.M. 1921; Cal. Civ. C. Sec. 1950; Based on Field Civ. C. Sec. 998; re-en. Sec. 7750, R.C.M. 1935; R.C.M. 1947, 42-210; amd. Sec. 2182, Ch. 56, L. 2009.

70-26-102. Transferee of rental property to have same rights as transferor. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any rent is transferred is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease, or of any waste or cause of forfeiture as the person's grantor or devisor might have had.

History: En. Sec. 1273, Civ. C. 1895; re-en. Sec. 4521, Rev. C. 1907; re-en. Sec. 6763, R.C.M. 1921; Cal. Civ. C. Sec. 821; Field Civ. C. Sec. 260; re-en. Sec. 6763, R.C.M. 1935; R.C.M. 1947, 67-704; amd. Sec. 2183, Ch. 56, L. 2009.

70-26-103. Attornment of tenant to stranger void. The attornment of a tenant to a stranger is void unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

History: **En. Sec. 48, p. 487, Bannack Stat.; re-en. Sec. 48, p. 403, Cod. Stat. 1871; re-en. Sec. 225, 5th Div. Rev. Stat. 1879; re-en. Sec. 283, 5th Div. Comp. Stat. 1887; re-en. Sec. 2627, Civ. C. 1895; re-en. Sec. 5233, Rev. C. 1907; re-en. Sec. 7748, R.C.M. 1921; Cal. Civ. C. Sec. 1948; re-en. Sec. 7748, R.C.M. 1935; R.C.M. 1947, 42-208.**

Cross-References

Relation of landlord and tenant as affecting adverse possession, 70-19-412.

70-26-104. Notice of action by third person served on tenant — duty to inform landlord. A tenant who receives notice of a proceeding to recover the real property occupied by the tenant or the possession of the real property shall immediately inform the landlord of the notice and shall also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages that the landlord may sustain by reason of any omission to inform the landlord of the notice or to deliver it to the landlord if in writing.

History: **En. Sec. 2628, Civ. C. 1895; re-en. Sec. 5234, Rev. C. 1907; re-en. Sec. 7749, R.C.M. 1921; Cal. Civ. C. Sec. 1949; Based on Field Civ. C. Sec. 997; re-en. Sec. 7749, R.C.M. 1935; R.C.M. 1947, 42-209; amd. Sec. 2184, Ch. 56, L. 2009.**

70-26-105. Assignee of lessee — remedies of lessor against. Whatever remedies the lessor of any real property has against the lessor's immediate lessee for the breach of any agreement in the lease or for recovery of the possession, the lessor has against the assignees of the lessee for any cause of action accruing while they are assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

History: **En. Sec. 1274, Civ. C. 1895; re-en. Sec. 4522, Rev. C. 1907; re-en. Sec. 6764, R.C.M. 1921; Cal. Civ. C. Sec. 822; Based on Field Civ. C. Sec. 261; re-en. Sec. 6764, R.C.M. 1935; R.C.M. 1947, 67-705; amd. Sec. 2185, Ch. 56, L. 2009.**

70-26-106. Rights of lessee and assignees against lessor and assignees. Whatever remedies the lessee of any real property may have against the lessee's immediate lessor for the breach of any agreement in the lease, the lessee may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and the lessor's assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

History: **En. Sec. 1275, Civ. C. 1895; re-en. Sec. 4523, Rev. C. 1907; re-en. Sec. 6765, R.C.M. 1921; Cal. Civ. C. Sec. 823; re-en. Sec. 6765, R.C.M. 1935; R.C.M. 1947, 67-706; amd. Sec. 2186, Ch. 56, L. 2009.**

70-26-107. Remedy for rent on lease for life. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

History: **En. Sec. 1276, Civ. C. 1895; re-en. Sec. 4524, Rev. C. 1907; re-en. Sec. 6766, R.C.M. 1921; Cal. Civ. C. Sec. 824; Field Civ. C. Sec. 263; re-en. Sec. 6766, R.C.M. 1935; R.C.M. 1947, 67-707.**

70-26-108. Rent dependent on life — recovery. Rent dependent on the life of a person may be recovered after as well as before the person's death.

History: **En. Sec. 1277, Civ. C. 1895; re-en. Sec. 4525, Rev. C. 1907; re-en. Sec. 6767, R.C.M. 1921; Cal. Civ. C. Sec. 825; Field Civ. C. Sec. 264; re-en. Sec. 6767, R.C.M. 1935; R.C.M. 1947, 67-708; amd. Sec. 2187, Ch. 56, L. 2009.**

Cross-References

Probate — creditors' claims, Title 72, ch. 3, part 8.

70-26-109. Change of lease terms by notice. In all leases of lands or tenements or of any interest therein from month to month, the landlord may, upon giving notice in writing at least 15 days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice if the tenant shall continue to hold the premises after the expiration of the month.

History: **En. Sec. 1279, Civ. C. 1895; re-en. Sec. 4527, Rev. C. 1907; re-en. Sec. 6769, R.C.M. 1921; Cal. Civ. C. Sec. 827; re-en. Sec. 6769, R.C.M. 1935; R.C.M. 1947, 67-710.**

Cross-References

Modification of contracts, Title 28, ch. 2, part 16.

70-26-110. Lease of city lot for over 75 years void. No lease or grant of any town or city lot for a period longer than 75 years, in which shall be reserved any rent or service of any kind, shall be valid.

History: **En. Sec. 1153, Civ. C. 1895; re-en. Sec. 4466, Rev. C. 1907; re-en. Sec. 6708, R.C.M. 1921; Cal. Civ. C. Sec. 718; amd. Sec. 1, Ch. 147, L. 1929; re-en. Sec. 6708, R.C.M. 1935; R.C.M. 1947, 67-409.**

Cross-References

Leases for more than 1 year to be in writing, 28-2-903.

Part 2
Commercial

70-26-201. Term of lease when none specified. A hiring of real property, other than lodgings and dwelling houses, in places where there is no usage on the subject, is presumed to be for 1 year from its commencement unless otherwise expressed in the hiring.

History: En. Sec. 2622, Civ. C. 1895; re-en. Sec. 5228, Rev. C. 1907; re-en. Sec. 7743, R.C.M. 1921; Cal. Civ. C. Sec. 1943; re-en. Sec. 7743, R.C.M. 1935; R.C.M. 1947, 42-203.

Cross-References

Leases for more than 1 year to be in writing, 28-2-903.

Leases on town or city lots for over 75 years void, 70-26-110.

70-26-202. Rent — when payable. When there is no usage or contract to the contrary, rents for real property under an arrangement not governed by chapter 24 of this title are payable at the termination of the holding if it does not exceed 1 year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

History: En. Sec. 2626, Civ. C. 1895; re-en. Sec. 5232, Rev. C. 1907; re-en. Sec. 7747, R.C.M. 1921; Cal. Civ. C. Sec. 1947; re-en. Sec. 7747, R.C.M. 1935; R.C.M. 1947, 42-207; amd. Sec. 15, Ch. 115, L. 1979.

70-26-203. Failure of lessor to repair — lessee's remedies. (1) If within a reasonable time after notice to the lessor of dilapidations that the lessor ought to repair, the lessor neglects to do so and if the cost of the repairs does not require an expenditure greater than 1 month's rent of the premises, the lessee may perform the repairs and deduct the expenses of the repairs from the rent or the lessee may vacate the premises, in which case the lessee is discharged from further payment of rent or performance of other conditions.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by Title 70, chapter 24.

History: En. Sec. 2621, Civ. C. 1895; re-en. Sec. 5227, Rev. C. 1907; re-en. Sec. 7742, R.C.M. 1921; Cal. Civ. C. Sec. 1942; Based on Field Civ. C. Sec. 991; re-en. Sec. 7742, R.C.M. 1935; R.C.M. 1947, 42-202; amd. Sec. 16, Ch. 115, L. 1979; amd. Sec. 2188, Ch. 56, L. 2009.

70-26-204. Renewal of lease by lessee's continued possession. If a lessee of real property leased under an arrangement not governed by Title 70, chapter 24, remains in possession of the property after the expiration of the hiring and the lessor accepts rent from the lessee, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding 1 month when the rent is payable monthly, or in any case 1 year.

History: En. Sec. 2624, Civ. C. 1895; re-en. Sec. 5230, Rev. C. 1907; re-en. Sec. 7745, R.C.M. 1921; Cal. Civ. C. Sec. 1945; Based on Field Civ. C. Sec. 994; re-en. Sec. 7745, R.C.M. 1935; R.C.M. 1947, 42-205; amd. Sec. 17, Ch. 115, L. 1979; amd. Sec. 2189, Ch. 56, L. 2009.

70-26-205. Notice required to terminate lease. (1) A hiring of real property for a term not specified by the parties is presumed to be renewed as stated in 70-26-204 at the end of the term implied by law unless one of the parties gives notice to the other of the intention to terminate the hiring at least as long before the expiration of the hiring as the term of the hiring itself, not exceeding 1 month.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by Title 70, chapter 24.

History: En. Sec. 2625, Civ. C. 1895; re-en. Sec. 5231, Rev. C. 1907; re-en. Sec. 7746, R.C.M. 1921; Cal. Civ. C. Sec. 1946; Based on Field Civ. C. Sec. 995; re-en. Sec. 7746, R.C.M. 1935; R.C.M. 1947, 42-206; amd. Sec. 18, Ch. 115, L. 1979; amd. Sec. 2190, Ch. 56, L. 2009.

Cross-References

Tenancy at will — termination by notice, 70-27-104.

Holdover or collusion after notice — treble rent, 70-27-207.

Holdover after tenant's notice to quit — treble rent, 70-27-208.

70-26-206. Rights of tenant for years or at will. (1) A tenant for years or at will, unless the tenant is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of the tenancy and may cultivate and harvest the crops growing at the end of the tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to the tenant by the agreement or instrument by which the tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by Title 70, chapter 24.

History: (1)En. Sec. 1271, Civ. C. 1895; re-en. Sec. 4519, Rev. C. 1907; re-en. Sec. 6761, R.C.M. 1921; Cal. Civ. C. Sec. 819; Based on Field Civ. C. Sec. 258; re-en. Sec. 6761, R.C.M. 1935; Sec. 67-702, R.C.M. 1947; (2)En. Sec. 1272, Civ. C. 1895; re-en. Sec. 4520, Rev. C. 1907; re-en. Sec. 6762, R.C.M. 1921; Cal. Civ. C. Sec. 820; Field Civ. C. Sec. 259; re-en. Sec. 6762, R.C.M. 1935; Sec. 67-703, R.C.M. 1947; R.C.M. 1947, 67-702, 67-703; (3)En. Sec. 19, Ch. 115, L. 1979; amd. Sec. 2191, Ch. 56, L. 2009.

70-26-207. Repealed. Sec. 1, Ch. 11, L. 1985.

History: En. Sec. 1152, Civ. C. 1895; re-en. Sec. 4465, Rev. C. 1907; amd. Sec. 1, Ch. 172, L. 1919; re-en. Sec. 6707, R.C.M. 1921; Cal. Civ. C. Sec. 717; re-en. Sec. 6707, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1941; R.C.M. 1947, 67-408.

CHAPTER 27
FORCIBLE ENTRY AND DETAINER UNLAWFUL DETAINER

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Part 1
Definitions and Preliminary Procedure

70-27-101. Application and jurisdiction. (1) This chapter, except as it relates to forcible detainer as defined in 70-27-103(2) only and as it relates to forcible entry, does not apply to arrangements governed by chapter 24 of this title.

(2) The district court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter, provided that justices' courts, within their respective counties, shall have concurrent jurisdiction.

History: En. Sec. 2084, C. Civ. Proc. 1895; re-en. Sec. 7273, Rev. C. 1907; re-en. Sec. 9891, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1163; re-en. Sec. 9891, R.C.M. 1935; amd. Sec. 26, Ch. 491, L. 1973; R.C.M. 1947, 93-9705; amd. Sec. 3, Ch. 417, L. 1979.

70-27-102. Forcible entry defined. Every person is guilty of a forcible entry who either:

(1) by breaking open doors, windows, or other parts of a house or by any kind of violence or circumstance of terror enters upon or into any real property or mining claim; or

(2) after entering peaceably upon real property or mining claim, turns out by force, threats, or menacing conduct the party in possession.

History: En. Sec. 2080, C. Civ. Proc. 1895; re-en. Sec. 7269, Rev. C. 1907; re-en. Sec. 9887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1159; re-en. Sec. 9887, R.C.M. 1935; R.C.M. 1947, 93-9701.

70-27-103. Forcible detainer defined. Every person is guilty of a forcible detainer who either:

(1) by force or by menaces and threats of violence unlawfully holds and keeps the possession of any real property or mining claim, whether the same was acquired peaceably or otherwise; or

(2) in the nighttime or during the absence of the occupant of any lands or mining claim unlawfully enters upon real property and, after demand made for the surrender thereof, for the period of 5 days refuses to surrender the same to such former occupant. The occupant of real property or mining claim, within the meaning of this subsection, is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisputed possession of such lands.

History: En. Sec. 2081, C. Civ. Proc. 1895; re-en. Sec. 7270, Rev. C. 1907; re-en. Sec. 9888, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1160; re-en. Sec. 9888, R.C.M. 1935; R.C.M. 1947, 93-9702.

70-27-104. Tenancy at will — termination by notice. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed in this chapter, to remove from the premises within a period of not less than 1 month, to be specified in the notice; but none of the estates or tenancies embraced by the provisions of 70-15-202(4) is a tenancy or estate at will.

History: En. Sec. 1240, Civ. C. 1895; re-en. Sec. 4502, Rev. C. 1907; re-en. Sec. 6744, R.C.M. 1921; Cal. Civ. C. Sec. 789; Based on Field Civ. C. Sec. 240; amd. Sec. 1, Ch. 50, L. 1931; re-en. Sec. 6744, R.C.M. 1935; R.C.M. 1947, 67-523.

70-27-105. Remedies of landlord after notice. After such notice has been served and the period specified by such notice has expired, but not before, the landlord may reenter or proceed according to law to recover possession.

History: En. Sec. 1241, Civ. C. 1895; re-en. Sec. 4503, Rev. C. 1907; re-en. Sec. 6745, R.C.M. 1921; Cal. Civ. C. Sec. 790; Based on Field Civ. C. Sec. 242; re-en. Sec. 6745, R.C.M. 1935; R.C.M. 1947, 67-524.

70-27-106. Reentry — when and how to be made. Whenever the right of reentry is given to the grantor or lessor in any grant or lease or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in this chapter.

History: En. Sec. 1242, Civ. C. 1895; re-en. Sec. 4504, Rev. C. 1907; re-en. Sec. 6746, R.C.M. 1921; Cal. Civ. C. Sec. 791; Based on Field Civ. C. Sec. 243; re-en. Sec. 6746, R.C.M. 1935; R.C.M. 1947, 67-525.

70-27-107. Action for possession under right of reentry — notice not required. An action for the possession of real property leased or granted with a right of reentry may be maintained at any time in the district court, after the right to reenter has accrued, without the notice prescribed in 70-27-106.

History: En. Sec. 1244, Civ. C. 1895; re-en. Sec. 4506, Rev. C. 1907; re-en. Sec. 6748, R.C.M. 1921; Cal. Civ. C. Sec. 793; Field Civ. C. Sec. 244; re-en. Sec. 6748, R.C.M. 1935; R.C.M. 1947, 67-527.

70-27-108. Unlawful detainer defined. A tenant of real property or a mining claim for a term less than life is guilty of unlawful detainer:

(1) when the tenant continues in possession, in person or by subtenant, of the property or any part of the property after the expiration of the term for which it is let to the tenant without the permission of the landlord or the successor in estate of the landlord, if any, but in case of a tenancy at will, it must first be terminated by notice, as prescribed in 70-27-104;

(2) when the tenant continues in possession, in person or by subtenant, without permission of the landlord or the successor in estate of the landlord, if any, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and 3 days' notice in writing requiring its payment, stating the amount that is due, or possession of the property has been served upon the tenant and, if there is a subtenant in actual occupation of the premises, also upon the subtenant. The notice may be served at any time within 1 year after the rent becomes due. In all cases of tenancy upon agricultural lands when the tenant has held over and

retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of the landlord, if any, the tenant is considered to be holding by permission of the landlord or the successor in estate of the landlord and is entitled to hold under the terms of the lease for another full year and may not be guilty of an unlawful detainer during the year, and the holding over must be taken and construed as a consent on the part of a tenant to hold for another year.

(3) when the tenant continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, other than for the payment of rent, and 3 days' notice in writing requiring the performance of conditions or covenants or the possession of the property has been served upon the tenant and, if there is a subtenant in actual occupation of the premises, also upon the subtenant. Within 3 days after the serving of the notice, the tenant or any subtenant in actual occupation of the premises or any mortgagee of the term or other person interested in its continuance may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and save the lease from forfeiture. If the covenants and conditions of the lease violated by the lessee cannot afterward be performed, then notice, as prescribed in this subsection, need not be given to the lessee or the subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of the undertenant's unlawful detention of the premises. Any tenant or subtenant assigning or subletting or committing waste upon the demised premises contrary to the covenants of the lease thereby terminates the lease, and the landlord or the landlord's successor in estate, upon service of 3 days' notice to quit upon the person or persons in possession, is entitled to restitution of possession of the demised premises under the provisions of this chapter.

History: En. Sec. 658, p. 174, Bannack Stat.; re-en. Sec. 647, p. 165, Cod. Stat. 1871; re-en. Sec. 707, 1st Div. Rev. Stat. 1879; re-en. Sec. 727, 1st Div. Comp. Stat. 1887; en. Sec. 2082, C. Civ. Proc. 1895; re-en. Sec. 7271, Rev. C. 1907; re-en. Sec. 9889, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1161; re-en. Sec. 9889, R.C.M. 1935; R.C.M. 1947, 93-9703; amd. Sec. 2192, Ch. 56, L. 2009.

Cross-References

Nonapplicability of unlawful detainer to residential arrangements, 70-27-101.

70-27-109. General rules of practice applicable. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice mentioned in this chapter.

History: En. Sec. 2097, C. Civ. Proc. 1895; re-en. Sec. 7286, Rev. C. 1907; re-en. Sec. 9904, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1177; re-en. Sec. 9904, R.C.M. 1935; R.C.M. 1947, 93-9718; amd. Sec. 20, Ch. 115, L. 1979.

70-27-110. Service of notice — how made. (1) The notices required by 70-27-108 may be served either:

(a) by delivering a copy to the tenant personally;

(b) if the tenant is absent from the tenant's place of residence and from the tenant's usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy through the mail addressed to the tenant at the tenant's place of residence; or

(c) if the place of residence and business cannot be ascertained or a person of suitable age or discretion cannot be found there, then by affixing a copy in a conspicuous place on the property and also delivering a copy to a person residing there if a person can be found and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

(2) Service upon a subtenant may be made in the same manner.

History: En. Sec. 2083, C. Civ. Proc. 1895; re-en. Sec. 7272, Rev. C. 1907; re-en. Sec. 9890, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1162; re-en. Sec. 9890, R.C.M. 1935; R.C.M. 1947, 93-9704; amd. Sec. 2193, Ch. 56, L. 2009.

70-27-111. Parties defendant. (1) A person, other than the tenant of the premises and a subtenant, if there is one, occupying the premises when the complaint is filed need not be made a party defendant in the proceeding, and a proceeding may not abate or the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant. However, when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against that party.

(2) If a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by 70-27-108(2) upon the tenant of the premises, the fact that the notice was not served on each subtenant does not constitute a defense to the action.

(3) If a married person is a tenant or subtenant, failure to join the person's spouse does not constitute a defense. However, if the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant may be enforced only against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by the tenant's or subtenant's spouse.

(4) All persons who enter the premises after the commencement of the action are bound by the judgment in the same manner as if they had been made party to the action.

History: En. Sec. 2085, C. Civ. Proc. 1895; re-en. Sec. 7274, Rev. C. 1907; re-en. Sec. 9892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1164; re-en. Sec. 9892, R.C.M. 1935; amd. Sec. 58, Ch. 535, L. 1975; R.C.M. 1947, 93-9706; amd. Sec. 2194, Ch. 56, L. 2009; amd. Sec. 35, Ch. 19, L. 2011.

70-27-112. Applicability of general provisions on parties. Except as provided in 70-27-111, the provisions of Title 25 relating to parties to civil actions are applicable to this proceeding.

History: En. Sec. 2086, C. Civ. Proc. 1895; re-en. Sec. 7275, Rev. C. 1907; re-en. Sec. 9893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1165; re-en. Sec. 9893, R.C.M. 1935; R.C.M. 1947, 93-9707.

70-27-113. Complaint and summons. (1) The plaintiff's complaint, which must be in writing, must set forth the facts on which the plaintiff seeks to recover and describe the premises with reasonable certainty. The complaint may set forth any circumstances of fraud, force, or violence that may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages. If the unlawful detainer is charged after default in the payment of rent, the complaint must state the amount of rent.

(2) Upon filing the complaint, a summons must be issued on the complaint as in other cases.

History: En. Sec. 2087, C. Civ. Proc. 1895; re-en. Sec. 7276, Rev. C. 1907; re-en. Sec. 9894, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1166; re-en. Sec. 9894, R.C.M. 1935; R.C.M. 1947, 93-9708(part); amd. Sec. 1, Ch. 231, L. 1999.

70-27-114. Summons — contents — service. (1) The summons must:

(a) state the parties to the proceeding, the court in which the proceeding is brought, the nature of the action in concise terms, and the relief sought; and

(b) notify the defendant to appear and answer within 10 days of service and that the relief sought will be taken against the defendant if the defendant does not appear.

(2) The summons must be directed to the defendant and must be served and returned in the same manner as a summons in civil actions is served and returned.

(3) The summons must be served personally upon the defendant if the defendant can be found with due diligence within the state, or if the defendant cannot be found with due diligence within the state, the summons must be served in the same manner as notices are required to be served in 70-27-110.

(4) Upon the return of a summons issued under this chapter that was not served or not served in time, the plaintiff may have a new summons issued, as if no previous summons had been issued.

History: En. Secs. 2087, 2088, C. Civ. Proc. 1895; re-en. Secs. 7276, 7277, Rev. C. 1907; re-en. Secs. 9894, 9895, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1166, 1167; re-en. Secs. 9894, 9895, R.C.M. 1935; R.C.M. 1947, 93-9708(part), 93-9709; amd. Sec. 1, Ch. 303, L. 1979; amd. Sec. 2, Ch. 231, L. 1999.

70-27-115. Repealed. Sec. 4, Ch. 231, L. 1999.

History: En. Sec. 2090, C. Civ. Proc. 1895; re-en. Sec. 7279, Rev. C. 1907; re-en. Sec. 9897, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1170; re-en. Sec. 9897, R.C.M. 1935; R.C.M. 1947, 93-9711; amd. Sec. 21, Ch. 115, L. 1979; amd. Sec. 1, Ch. 138, L. 1993.

70-27-116. Verification of complaint and answer. The complaint and answer must be verified. If new matter be set up in the answer, it is deemed denied.

History: En. Sec. 2095, C. Civ. Proc. 1895; re-en. Sec. 7284, Rev. C. 1907; re-en. Sec. 9902, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1175; re-en. Sec. 9902, R.C.M. 1935; R.C.M. 1947, 93-9716.

70-27-117. Judgment by default. If the defendant does not appear and defend within 10 days of service, the court shall enter the defendant's default and enter judgment in favor of the plaintiff as requested in the complaint.

History: En. Sec. 2089, C. Civ. Proc. 1895; re-en. Sec. 7278, Rev. C. 1907; re-en. Sec. 9896, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1169; re-en. Sec. 9896, R.C.M. 1935; R.C.M. 1947, 93-9710; amd. Sec. 3, Ch. 231, L. 1999.

Part 2
Trial, Judgment, and Appeal

70-27-201. Trial by jury. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

History: En. Sec. 2091, C. Civ. Proc. 1895; re-en. Sec. 7280, Rev. C. 1907; re-en. Sec. 9898, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1171; re-en. Sec. 9898, R.C.M. 1935; R.C.M. 1947, 93-9712.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.
Juries and jurors, Title 3, ch. 15.

70-27-202. Actions in justice's court to be tried within 10 days. (1) Actions filed in justice's court under this chapter shall be tried within 10 days after the appearance or answer date stated in the summons unless the defendant applying for a continuance shall give an undertaking to the adverse party with good and sufficient security to be approved by the court, conditioned for the payment of all damages and rent that may accrue if judgment be rendered against the defendant.

(2) The plaintiff and defendant may stipulate to a continuance of the trial beyond the limit of this section without the necessity of an undertaking.

History: En. 93-9712.1 by Sec. 1, Ch. 166, L. 1977; R.C.M. 1947, 93-9712.1.

Cross-References

Jurisdiction of Justices' Courts, Title 3, ch. 10, part 3.

70-27-203. Showings required on trial. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff is only required to show, in addition to the forcible entry or forcible detainer complained of, that the plaintiff was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer. The defendant may show in defense that the defendant or the defendant's ancestors or those whose interest in the premises the defendant claims have been in the quiet possession of the premises for the space of 1 whole year before the commencement of the proceedings and that the defendant's interest in the premises is not then ended or determined, and the showing is a bar to the proceedings.

History: En. Sec. 654, p. 173, Bannack Stat.; re-en. Sec. 643, p. 164, Cod. Stat. 1871; re-en. Sec. 703, 1st Div. Rev. Stat. 1879; re-en. Sec. 723, 1st Div. Comp. Stat. 1887; amd. Sec. 2092, C. Civ. Proc. 1895; re-en. Sec. 7281, Rev. C. 1907; re-en. Sec. 9899, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1172; re-en. Sec. 9899, R.C.M. 1935; R.C.M. 1947, 93-9713; amd. Sec. 2195, Ch. 56, L. 2009.

70-27-204. Amendment of complaint after trial begins. (1) When, upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either forcible entry or forcible or unlawful detainer and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform with such proof. Such amendment must be made without any imposition of terms.

(2) No continuance shall be permitted on account of such amendment unless the defendant by affidavit filed shows to the satisfaction of the court good cause therefor.

History: En. Sec. 2093, C. Civ. Proc. 1895; re-en. Sec. 7282, Rev. C. 1907; re-en. Sec. 9900, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1173; re-en. Sec. 9900, R.C.M. 1935; R.C.M. 1947, 93-9714.

70-27-205. Verdict, judgment, and execution. (1) If upon the trial the verdict of the jury or, if the case is tried without a jury, the finding of the court is in favor of the plaintiff and against the defendant, judgment must be entered for the restitution of the premises. If the proceeding is for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held or after default in the payment of rent, the judgment must also declare the forfeiture of the lease or agreement.

(2) The jury, or the court if the proceeding is tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry or by any forcible or unlawful detainer alleged in the complaint and proved on the trial and find the amount of any rent due if the alleged unlawful detainer is after default in the payment of rent. The judgment must be rendered against the defendant, guilty of the forcible entry or forcible or unlawful detainer, for three times the amount of the damages assessed and of the rent found due.

(3) When the proceeding is for an unlawful detainer after default in the payment of the rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment may not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant or any subtenant or any mortgagee of the term or other party interested in its continuance may pay into court for the landlord the amount found due as rent with interest and the amount of damages found by the jury or the court for the unlawful detainer and the costs of the proceeding, and upon the payment, the judgment is satisfied and the tenant must be restored to the tenant's estate. However, if the payment is not made within 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

History: **En. Sec. 2094, C. Civ. Proc. 1895; re-en. Sec. 7283, Rev. C. 1907; re-en. Sec. 9901, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1174; re-en. Sec. 9901, R.C.M. 1935; R.C.M. 1947, 93-9715; amd. Sec. 2196, Ch. 56, L. 2009.**

70-27-206. Treble damages. If a person recovers damages for a forcible or unlawful entry in or upon or detention of any building or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

History: **En. Sec. 232, p. 91, Bannack Stat.; re-en. Sec. 253, p. 187, L. 1867; re-en. Sec. 302, p. 93, Cod. Stat. 1871; re-en. Sec. 353, L. 1877; re-en. Sec. 353, 1st Div. Rev. Stat. 1879; re-en. Sec. 365, 1st Div. Comp. Stat. 1887; re-en. Sec. 1304, C. Civ. Proc. 1895; re-en. Sec. 6869, Rev. C. 1907; re-en. Sec. 9478, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 735; re-en. Sec. 9478, R.C.M. 1935; R.C.M. 1947, 93-6105.**

70-27-207. Holdover or collusion after notice — treble rent. If any tenant or any person in collusion with the tenant holds over any lands or tenements after demand made and 1 month's notice given in writing requiring the possession of the land or tenement, the person holding over shall pay to the landlord treble rent during the time the person continues in possession after the notice.

History: **En. Sec. 4351, Civ. C. 1895; re-en. Sec. 6077, Rev. C. 1907; re-en. Sec. 8695, R.C.M. 1921; Cal. Civ. C. Sec. 3345; re-en. Sec. 8695, R.C.M. 1935; R.C.M. 1947; 17-502; amd. Sec. 2197, Ch. 56, L. 2009.**

70-27-208. Holdover after tenant's notice to quit — treble rent. If any tenant gives notice of the intention to quit the premises and does not deliver up the possession at the time specified in the notice, the tenant shall pay to the landlord treble rent during the time the tenant continues in possession after the notice.

History: **En. Sec. 4350, Civ. C. 1895; re-en. Sec. 6076, Rev. C. 1907; re-en. Sec. 8694, R.C.M. 1921; Cal. Civ. C. Sec. 3344; re-en. Sec. 8694, R.C.M. 1935; R.C.M. 1947, 17-501; amd. Sec. 2198, Ch. 56, L. 2009.**

70-27-209. Treble rent exclusive of interest. The damages prescribed by 70-27-207 and 70-27-208 are exclusive of exemplary damages and interest.

History: **En. Sec. 4364, Civ. C. 1895; re-en. Sec. 6085, Rev. C. 1907; re-en. Sec. 8703, R.C.M. 1921; Cal. Civ. C. Sec. 3357; Field Civ. C. Sec. 1876; re-en. Sec. 8703, R.C.M. 1935; R.C.M. 1947, 17-605(part).**

70-27-210. Relief against forfeiture of lease in case of hardship. (1) The court may relieve a tenant against a forfeiture of a lease and restore the tenant to the tenant's former estate in the case of hardship when application for relief is made within 30 days after the forfeiture is declared by the judgment of the court, as provided in 70-27-205.

(2) The application may be made by a tenant or subtenant or mortgagee of the term or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which relief is sought, and must be verified by the applicant.

(3) Notice of the application with a copy of the petition must be served on the plaintiff in the judgment, who may appear and contest the application.

(4) The application may not be granted except on condition that full payment of rent due or full performance of conditions or covenants stipulated, as far as is practicable, is made.

History: **En. Sec. 2099, C. Civ. Proc. 1895; re-en. Sec. 7288, Rev. C. 1907; re-en. Sec. 9906, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1179; re-en. Sec. 9906, R.C.M. 1935; R.C.M. 1947, 93-9720; amd. Sec. 2199, Ch. 56, L. 2009.**

70-27-211. Appeal. An appeal may be taken by the plaintiff or defendant as in other cases.

History: En. Sec. 2096, C. Civ. Proc. 1895; re-en. Sec. 7285, Rev. C. 1907; re-en. Sec. 9903, R.C.M. 1921; re-en. Sec. 9903, R.C.M. 1935; R.C.M. 1947, 93-9717.

70-27-212. General provisions on new trials and appeals applicable. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

History: En. Sec. 2098, C. Civ. Proc. 1895; re-en. Sec. 7287, Rev. C. 1907; re-en. Sec. 9905, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1178; re-en. Sec. 9905, R.C.M. 1935; R.C.M. 1947, 93-9719.

CHAPTER 28

QUIETING TITLE TO REAL PROPERTY

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Part 1
Quieting Title Generally

70-28-101. Quiet title action authorized. An action may be brought and prosecuted to final decree, judgment, or order by any person or persons, whether in actual possession or not, claiming title to real estate against any person or persons, both known and unknown, who claim or may claim any right, title, estate, or interest therein or lien or encumbrance thereon adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, for the purpose of determining such claim or possible claim and quieting the title to said real estate.

History: En. Sec. 233, p. 92, Bannack Stat.; re-en. Sec. 254, p. 188, L. 1867; re-en. Sec. 303, p. 94, Cod. Stat. 1871; re-en. Sec. 354, p. 138, L. 1877; re-en. Sec. 354, 1st Div. Rev. Stat. 1879; re-en. Sec. 366, 1st Div. Comp. Stat. 1887; amd. Sec. 1310, C. Civ. Proc. 1895; re-en. Sec. 6870, Rev. C. 1907; amd. Sec. 1, Ch. 113, L. 1915; re-en. Sec. 9479, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 738; amd. Sec. 1, Ch. 70, L. 1931; re-en. Sec. 9479, R.C.M. 1935; R.C.M. 1947, 93-6203(part).

Cross-References

Ownership interests in land sold for taxes — quiet title, Title 15, ch. 18, part 4.

70-28-102. General procedural provisions applicable. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4 and 12(a), M.R.Civ.P., so far as they are not in conflict with this part, are applicable to the action herein provided for.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9486, R.C.M. 1921; re-en. Sec. 9486, R.C.M. 1935; R.C.M. 1947, 93-6209; amd. Sec. 22, Ch. 115, L. 1979.

70-28-103. Venue. All actions brought under 70-28-101 must be brought in the county in which the real estate or a portion thereof, as to which the title is sought to be quieted, is situated; provided that if the real estate is situated in more than one county, said action may be brought and prosecuted in either of said counties, and a transcript of the original judgment certified by the clerk of court shall be filed in the office of the clerk of court in the county other than which the action was brought in which any of the real estate affected thereby is situated.

History: En. Sec. 233, p. 92, Bannack Stat.; re-en. Sec. 254, p. 188, L. 1867; re-en. Sec. 303, p. 94, Cod. Stat. 1871; re-en. Sec. 354, p. 138, L. 1877; re-en. Sec. 354, 1st Div. Rev. Stat. 1879; re-en. Sec. 366, 1st Div. Comp. Stat. 1887; amd. Sec. 1310, C. Civ. Proc. 1895; re-en. Sec. 6870, Rev. C. 1907; amd. Sec. 1, Ch. 113, L. 1915; re-en. Sec. 9479, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 738; amd. Sec. 1, Ch. 70, L. 1931; re-en. Sec. 9479, R.C.M. 1935; R.C.M. 1947, 93-6203(part).

70-28-104. Parties defendant — unknown claimants. (1) In any action brought under 70-28-101 and 70-28-103, the plaintiff may join as defendants any or all persons, known or unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title, whether the claim or possible claim be present or contingent, including the person or persons in possession if the plaintiff is not in possession.

(2) If the plaintiff desires to obtain a complete adjudication of the title to the real estate described in the complaint, the plaintiff may name as defendants all known persons who assert or who might assert any claim as specified in subsection (1) and may join as defendants all persons unknown who might make any claim by adding in the caption of the complaint in the action the words "and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title, whether the claim or possible claim is present or contingent".

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9480, R.C.M. 1921; re-en. Sec. 9480, R.C.M. 1935; R.C.M. 1947, 93-6204; amd. Sec. 182, Ch. 575, L. 1981; amd. Sec. 2200, Ch. 56, L. 2009.

Cross-References

Designating unknown persons as defendants, 25-3-504.

70-28-105. Maintenance of action when no known claimants. If in any case there are no known claimants or possible claimants to any of the property involved in any action contemplated by 70-28-101 through 70-28-109, the action may nevertheless be maintained against all persons unknown claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint or any part thereof adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, and such action may be prosecuted to judgment in the same manner and with like effect as though there had been known claimants or possible claimants; and in any such case, the complaint, the affidavit for service by publication, the order for service by publication, and the decree shall state the facts and the summons shall be directed to such unknown persons.

History: En. Sec. 1, Ch. 68, L. 1939; re-en. Sec. 9488.1, R.C.M. 1935; R.C.M. 1947, 93-6212.

70-28-106. Notice of action to be filed with clerk and recorder. Before any order for the publication of summons is granted as provided in Rule 4, M.R.Civ.P., the plaintiff shall file, in the office of the clerk and recorder of each county in which any of the property involved in the action is situated, a notice of the pendency of the action, signed by the plaintiff or the plaintiff's attorney. The notice must contain:

(1) the title of the court in which the action is filed;
(2) the full caption of the cause;
(3) a complete description of all the property involved in the action; and
(4) a statement of the relief sought by the plaintiff.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9481, R.C.M. 1921; re-en. Sec. 9481, R.C.M. 1935; R.C.M. 1947, 93-6205; amd. Sec. 2201, Ch. 56, L. 2009.

70-28-107. Jurisdiction acquired by service — complete adjudication — judgment. (1) Upon the service of summons on all defendants, known and unknown, in the manner provided in Rule 4, M.R.Civ.P., the court in which such action is tried shall have jurisdiction to make a complete adjudication of the title to the lands named in the complaint and the title to which is sought to be quieted, including jurisdiction to direct:

(a) the cancellation of instruments constituting clouds upon such title;

(b) the execution of conveyances where it appears that any party to such action should execute such conveyance or conveyances;

(c) the execution of satisfactions of mortgages and other apparent liens upon such land or any part thereof; or

(d) the doing of any other act of a personal nature necessary to give effect to the rights of the respective parties to such action, as the same may be adjudicated by the court.

(2) When any judgment or decree shall be rendered in such action for a conveyance, release, or acquittance, as above mentioned, and the party or parties against whom the judgment or decree shall be rendered do not comply therewith within the time specified in said judgment or decree for such compliance, such judgment or decree shall have the same operation and effect and be as available as if the conveyance, release, or acquittance had been executed conformably to such judgment or decree.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9487, R.C.M. 1921; amd. Sec. 2, Ch. 55, L. 1923; re-en. Sec. 9487, R.C.M. 1935; R.C.M. 1947, 93-6210(part).

70-28-108. Prerequisites to decree against defendant not present. Before the plaintiff is entitled to a decree in an action against any defendant who does not appear in the action, the plaintiff shall produce evidence sufficient to prima facie entitle the plaintiff to relief. The relief may be granted only to the extent to which the evidence prima facie proves the plaintiff to be entitled to the relief. However, this provision may not affect the procedure in or manner of trial of the actions as between the plaintiff and any defendant who appears in the action.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9487, R.C.M. 1921; amd. Sec. 2, Ch. 55, L. 1923; re-en. Sec. 9487, R.C.M. 1935; R.C.M. 1947, 93-6210(part); amd. Sec. 2202, Ch. 56, L. 2009.

70-28-109. Who bound by judgment. Every person made a defendant to such action by name and every unknown claimant or possible claimant upon whom service has been made by publication, in accordance with Rule 4, M.R.Civ.P., and who has not appeared in such action shall be bound by the judgment or decree entered in such action, subject to the right of any such defendants to apply for relief in any manner provided by the statutes applicable to the case of a defaulting defendant served only by publication.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9488, R.C.M. 1921; re-en. Sec. 9488, R.C.M. 1935; R.C.M. 1947, 93-6211.

70-28-110. When value of improvements may be allowed as setoff. When damages are claimed for withholding the property recovered upon which permanent improvements have been made by a defendant or those under whom the defendant claims, holding under color of title adversely to the claim of plaintiff, in good faith, the value of the improvements must be allowed as setoff against the damage.

History: En. Sec. 236, p. 92, Bannack Stat.; re-en. Sec. 257, p. 188, L. 1867; re-en. Sec. 306, p. 94, Cod. Stat. 1871; re-en. Sec. 357, p. 138, L. 1877; re-en. Sec. 357, 1st Div. Rev. Stat. 1879; re-en. Sec. 369, 1st Div. Comp. Stat. 1887; re-en. Sec. 1313, C. Civ. Proc. 1895; re-en. Sec. 6873, Rev. C. 1907; re-en. Sec. 9491, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 741; re-en. Sec. 9491, R.C.M. 1935; R.C.M. 1947, 93-6215; amd. Sec. 2203, Ch. 56, L. 2009.

70-28-111. Termination of plaintiff's right during action — damages for withholding. In an action for the recovery of real property when the plaintiff shows a right to recover at the time the action was commenced but it appears that the plaintiff's right has terminated during the pendency of the action, the verdict and judgment must be according to the fact and the plaintiff may recover damages for withholding the property.

History: En. Sec. 235, p. 92, Bannack Stat.; re-en. Sec. 256, p. 188, L. 1867; re-en. Sec. 305, p. 94, Cod. Stat. 1871; re-en. Sec. 356, p. 138, L. 1877; re-en. Sec. 356, 1st Div. Rev. Stat. 1879; re-en. Sec. 368, 1st Div. Comp. Stat. 1887; re-en. Sec. 1312, C. Civ. Proc. 1895; re-en. Sec. 6872, Rev. C. 1907; re-en. Sec. 9490, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 740; re-en. Sec. 9490, R.C.M. 1935; R.C.M. 1947, 93-6214; amd. Sec. 2204, Ch. 56, L. 2009.

70-28-112. Costs — attorney fees. (1) If the defendant in a quiet title action disclaims in the answer any interest or estate in the property or allows judgment to be taken against the defendant without answer, the plaintiff may not recover costs. However, in actions that the plaintiff has brought under 30 U.S.C. 30 to determine an adverse claim, the plaintiff shall recover costs if the defendant does not relinquish in the proper United States land office or disclaim in writing any interest or estate in the property within 20 days from the filing of the adverse claim in the land office.

(2) The plaintiff in a quiet title action may recover costs and attorney fees if the defendant wrongfully filed a statement with the county clerk and recorder for transfer of property that had been owned in a joint tenancy severed under 72-2-814(2)(b). To be eligible to recover costs and fees, the plaintiff must have notified the defendant by certified mail that the defendant may be ordered to pay the plaintiff's costs and fees associated with a quiet title action unless the defendant executes documents to transfer the property to the plaintiff within 30 days or by a date mutually agreed to by the parties. The provisions of this subsection do not apply to joint tenancies revived under 72-2-814(5) unless subsequently severed. The provisions of this subsection do not preempt other remedies.

History: En. Sec. 234, p. 92, Bannack Stat.; re-en. Sec. 255, p. 188, L. 1867; re-en. Sec. 304, p. 93, Cod. Stat. 1871; re-en. Sec. 355, p. 138, L. 1877; re-en. Sec. 355, 1st Div. Rev. Stat. 1879; amd. Sec. 367, 1st Div. Comp. Stat. 1887; re-en. Sec. 1311, C. Civ. Proc. 1895; re-en. Sec. 6871, Rev. C. 1907; re-en. Sec. 9489, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 739; re-en. Sec. 9489, R.C.M. 1935; R.C.M. 1947, 93-6213; amd. Sec. 2205, Ch. 56, L. 2009; amd. Sec. 1, Ch. 148, L. 2019.

70-28-113. Order for survey or measurement. (1) The court in which an action is pending for the recovery of real property or mining claims or for damages for an injury or to quiet title or to determine adverse claims to real property or mining claims or a judge in the action may on motion, upon notice by either party, for good cause shown, grant an order allowing to the party the right to enter into or upon the property or mining claim and make survey or measurement of the property or claim or of any tunnels, shafts, or drifts in the property or claim for the purpose of the action even though entry for that purpose has to be made through other lands or mining claims belonging to parties to the action.

(2) The order must describe the property, and a copy of the order must be served on the owner or occupant. Upon service, the party may enter the property with necessary surveyors and assistants and make the survey and measurement. However, if unnecessary damage is done to the property, the party is liable for the damage.

History: (1)En. Sec. 237, p. 92, Bannack Stat.; re-en. Sec. 258, p. 188, L. 1867; re-en. Sec. 307, p. 95, Cod. Stat. 1871; en. Sec. 357, p. 138, L. 1877; re-en. Sec. 357, 1st Div. Rev. Stat. 1879; re-en. Sec. 369, 1st Div. Comp. Stat. 1887; amd. Sec. 1314, C. Civ. Proc. 1895; re-en. Sec. 6874, Rev. C. 1907; re-en. Sec. 9492, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 742; re-en. Sec. 9492, R.C.M. 1935; Sec. 93-6216, R.C.M. 1947; (2)En. Sec. 238, p. 92, Bannack Stat.; re-en. Sec. 259, p. 188, L. 1867; re-en. Sec. 308, p. 95, Cod. Stat. 1871; re-en. Sec. 358, p. 139, L. 1877; re-en. Sec. 358, 1st Div. Rev. Stat. 1879; re-en. Sec. 370, 1st Div. Comp. Stat. 1887; re-en. Sec. 1315, C. Civ. Proc. 1895; re-en. Sec. 6875, Rev. C. 1907; re-en. Sec. 9493, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 743; re-en. Sec. 9493, R.C.M. 1935; Sec 93-6217, R.C.M. 1947; R.C.M. 1947, 93-6216, 93-6217; amd. Sec. 2206, Ch. 56, L. 2009.

Cross-References

Limitations on actions arising out of work on improvements to real property, 27-2-208.
Professional land surveyor defined, 37-67-101.
Professional land surveyor — entry on land — trespass exception, 70-16-111.

Part 2
Property Granted to Heirs of Deceased Entryman — Quiet Title

70-28-201. Action authorized. Whenever the government of the United States has granted lands in the state of Montana to the heirs of a deceased entryman, any person who claims an estate of inheritance or interest in the lands may bring and maintain an action in rem against all the world in the district court for the county in which the real property is situated to establish the person's title to the property and to determine all adverse claims to the title. Any number of separate parcels of land claimed by the plaintiff may be included in the same action.

History: En. Sec. 1, Ch. 15, L. 1915; re-en. Sec. 9501, R.C.M. 1921; re-en. Sec. 9501, R.C.M. 1935; R.C.M. 1947, 93-6225; amd. Sec. 2207, Ch. 56, L. 2009.

70-28-202. General procedural provisions applicable. Except as herein otherwise provided, all the provisions and rulings of law relating to evidence, pleading, practice, new trials, and appeals applicable to other civil actions shall apply to the actions hereby authorized.

History: En. Sec. 12, Ch. 15, L. 1915; re-en. Sec. 9512, R.C.M. 1921; re-en. Sec. 9512, R.C.M. 1935; R.C.M. 1947, 93-6236(part).

70-28-203. Remedies cumulative. The remedies provided for by this part shall be deemed cumulative and in addition to any other remedy now or hereafter provided by law for quieting or establishing title to real property.

History: En. Sec. 14, Ch. 15, L. 1915; re-en. Sec. 9515, R.C.M. 1921; re-en. Sec. 9515, R.C.M. 1935; R.C.M. 1947, 93-6239.

70-28-204. Executor, administrator, or guardian as party. An executor, administrator, or guardian or other person claiming an interest by deed of conveyance or otherwise may maintain, as plaintiff, and may appear and defend in the action herein provided for.

History: En. Sec. 14, Ch. 15, L. 1915; re-en. Sec. 9514, R.C.M. 1921; re-en. Sec. 9514, R.C.M. 1935; R.C.M. 1947, 93-6238.

70-28-205. Complaint. The action shall be commenced by the filing of a verified complaint in which the parties so commencing the same shall be named as plaintiffs and the defendants shall be described as "all persons claiming any interest in or lien upon the real property herein described or any part thereof" and which shall:

(1) contain a statement of the facts enumerated in 70-28-201;

(2) contain a particular description of such real property; and

(3) specify the estate, title, or interest of the plaintiff therein.

History: En. Sec. 2, Ch. 15, L. 1915; re-en. Sec. 9502, R.C.M. 1921; re-en. Sec. 9502, R.C.M. 1935; R.C.M. 1947, 93-6226.

70-28-206. Affidavit to accompany complaint. (1) At the time of filing the complaint, the plaintiff shall file with the complaint the plaintiff's affidavit fully and explicitly setting forth and showing:

(a) the character of the plaintiff's estate, right, title, interest, or claim in the property;

(b) whether or not the plaintiff has ever made any conveyance of the plaintiff's interest in the property or any part of the property and, if so, when and to whom the conveyance was made and also a statement of all existing mortgages, deeds of trust, judgments, or other liens on the property;

(c) when and where the deceased entryman of the property died;

(d) what kin or relationship the claimant bore to the entryman at the time of the entryman's death; and

(e) the names and residences of any other persons who are next of kin or entitled to succeed to any portion of the lands, the subject of the action, and the names of and residences of all persons who have liens upon the property or any part of the property adversely to the plaintiff if the plaintiff knows or has been informed or has been able to discover any adverse person.

(2) If the plaintiff is unable to state any one or more of the matters required in subsection (1), the plaintiff shall set forth and show fully and explicitly the reasons for the inability.

(3) The affidavit constitutes a part of the judicial record.

(4) If the plaintiff is a person under guardianship, the affidavit must be made by the guardian.

History: En. Sec. 3, Ch. 15, L. 1915; re-en. Sec. 9503, R.C.M. 1921; re-en. Sec. 9503, R.C.M. 1935; R.C.M. 1947, 93-6227; amd. Sec. 183, Ch. 575, L. 1981; amd. Sec. 2208, Ch. 56, L. 2009.

70-28-207. Summons — issuance and form. Upon the filing of the complaint and affidavit, a summons must be issued under the seal of the court, which must contain the name of the court and county in which the action is brought, the name of the plaintiff, and the particular description of the real property involved and must be directed to "all persons claiming any interest in or lien upon the real property described in this summons or any part of the real property" as defendants and must be substantially in the following form:

"In the district court of the.... judicial district of the state of Montana, in and for the county of..... plaintiff, vs. all persons claiming any interest in or lien upon the real property described in this summons or any part of the real property, defendants.

The state of Montana to all persons claiming any interest in or lien upon the real property described in this summons or any part of the real property, defendants, Greeting:

You are required to appear and answer the complaint of...., plaintiff, filed with the clerk of this court, within 60 days after the first publication of this summons, and set forth what interest or lien, if any, you have in or upon that certain real property or any part of the real property situated in the county of...., state of Montana, particularly described as follows: (Here insert description.)

You are further notified that, unless you appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint. (Here insert a statement of the relief demanded.)

Witness my hand and the seal of court this .... day of ...., 20...

..............., Clerk"

History: En. Sec. 4, Ch. 15, L. 1915; re-en. Sec. 9504, R.C.M. 1921; re-en. Sec. 9504, R.C.M. 1935; R.C.M. 1947, 93-6228; amd. Sec. 90, Ch. 51, L. 1999.

70-28-208. Publication and posting of summons. (1) The summons shall be published in a newspaper of general circulation published in the county in which the action is brought. The newspaper in which such publication is to be made shall be designated by an order of the court or judge thereof to be signed and filed with the clerk. No other order for the publication of the summons shall be necessary, nor shall any affidavit therefor be required, nor need any copy of the complaint be served, except as hereinafter required. The summons shall be published at least once a week for a period of 5 weeks and to each publication thereof shall be appended a memorandum, signed by the plaintiff's attorney, in substance as follows "The following persons are said to claim an interest in or lien upon said property, adverse to plaintiff." (Give names and addresses as above provided.)

(2) A copy of the summons together with a copy of the foregoing memorandum shall be posted in a conspicuous place on each separate parcel of the property described in the complaint within 10 days after the first publication of the summons.

History: En. Sec. 5, Ch. 15, L. 1915; re-en. Sec. 9505, R.C.M. 1921; re-en. Sec. 9505, R.C.M. 1935; R.C.M. 1947, 93-6229.

70-28-209. Personal service of summons — service by mail. (1) If the affidavit discloses the name of any person next of kin or relationship to the deceased entryman or entitled to succeed to any part of the property or the name of a person who claims or may claim an interest by mortgage, trust deed, judgment, or other lien, the summons must also be personally served upon that person, if the person can be found within the state, together with a copy of the complaint and a copy of the affidavit, during the period of the publication of the summons, and there must be attached to the copy of the summons delivered to the person a copy of the memorandum provided in 70-28-208.

(2) If the person resides out of the state, a copy of the summons, memorandum, complaint, and affidavit must be, within 10 days after the first publication of the summons, deposited in the United States post office, enclosed in a sealed envelope, postage prepaid, addressed to the person at the address given in the affidavit or, if an address is not given in the affidavit, then at the county seat of the county in which the action was brought. If the person resides within the state and could not with due diligence be found within the state within the period of the publication of the summons, then the notice described in this subsection must be mailed to the person, as provided in this subsection, upon the expiration of the period of publication.

History: En. Sec. 6, Ch. 15, L. 1915; re-en. Sec. 9506, R.C.M. 1921; re-en. Sec. 9506, R.C.M. 1935; R.C.M. 1947, 93-6230; amd. Sec. 2209, Ch. 56, L. 2009.

70-28-210. Jurisdiction acquired by service — complete. Upon the completion of the publication and posting of the summons and its service upon and mailing to the persons, if any, upon whom it is hereby directed to be so specially served, the court shall have full and complete jurisdiction over the plaintiff and the property and of the person of every one having or claiming any estate, right, title, or interest in or to or lien upon such property or any part thereof and shall be deemed to have obtained the possession and control of said property for the purposes of the action and shall have full and complete jurisdiction to render the judgment therein which is provided for in this part.

History: **En. Sec. 7, Ch. 15, L. 1915; re-en. Sec. 9507, R.C.M. 1921; re-en. Sec. 9507, R.C.M. 1935; R.C.M. 1947, 93-6231.**

70-28-211. Depositions. (1) At any time after the issuance of the summons, any party to the action may take depositions therein in conformity to law, upon notice to the adverse party sought to be bound by such depositions and who has appeared in the action, if any, and upon notice filed with the clerk.

(2) The depositions may be used by any party against any other party giving or receiving the notice (except the clerk), subject to all just exceptions.

History: **En. Sec. 12, Ch. 15, L. 1915; re-en. Sec. 9512, R.C.M. 1921; re-en. Sec. 9512, R.C.M. 1935; R.C.M. 1947, 93-6236(part).**

70-28-212. Time for appearance by defendant — answer. At any time within the first 60 days from the first publication of the summons or within a further time, not exceeding 30 days, that the court may for good cause grant, any person having or claiming any estate, right, title, or interest in or to or lien upon the property or any part of the property may appear and become a party to the action by pleading to the complaint. All answers must be verified and set forth specifically the kin or relationship of the deceased entryman and the estate, right, title, interest, or lien claimed.

History: **En. Sec. 8, Ch. 15, L. 1915; re-en. Sec. 9508, R.C.M. 1921; re-en. Sec. 9508, R.C.M. 1935; R.C.M. 1947, 93-6232; amd. Sec. 2210, Ch. 56, L. 2009.**

70-28-213. Recording of notice by plaintiff and defendant. (1) The plaintiff shall, at the time of filing the complaint, and every defendant to claim or claiming any affirmative relief shall, at the time of filing an answer, record in the office of the county clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the object of the action or the defense and a particular description of the property affected by the action.

(2) The clerk and recorder shall record the filing in a book of the miscellaneous records of the clerk's office and shall make a reference as to the date and time of the filing of the notice and, when recorded, to the book and page record.

History: **En. Sec. 9, Ch. 15, L. 1915; re-en. Sec. 9509, R.C.M. 1921; re-en. Sec. 9509, R.C.M. 1935; R.C.M. 1947, 93-6233; amd. Sec. 2211, Ch. 56, L. 2009.**

70-28-214. Default judgment prohibited — proof and inquiry required. No judgment in any such action shall be given by default, but the court must require proof of the facts alleged in the complaint and other pleadings, and the court must further make diligent inquiry of the plaintiff and all defendants appearing concerning the next of kin of said deceased entryman, and upon such examination should any heir be discovered who has not been served or who has not appeared, the court may order such heir brought in if necessary for the determination herein provided for.

History: **En. Sec. 10, Ch. 15, L. 1915; re-en. Sec. 9510, R.C.M. 1921; re-en. Sec. 9510, R.C.M. 1935; R.C.M. 1947, 93-6234.**

70-28-215. Judgment — nature and effect — recording. (1) The judgment must ascertain and determine the heirship of the deceased entryman and all estates, rights, titles, interests, and claims in and to the property and every part of the property, whether the estates, rights, titles, interests, and claims are legal or equitable, present or future, vested or contingent, or whether the estates, rights, titles, interests, and claims consist of mortgages or liens of any description. The judgment must be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed to have any estate, right, title, or interest in or to the property or any part of the property and upon every person claiming under the person by title subsequent to the commencement of the action.

(2) A certified copy of the judgment in the action must be recorded in the office of the clerk and recorder of the county in which the action was commenced, and any party or the successor in interest of any party to the action may file for record in the office of the clerk and recorder of the county the entire judicial record in the action.

History: **En. Sec. 11, Ch. 15, L. 1915; re-en. Sec. 9511, R.C.M. 1921; re-en. Sec. 9511, R.C.M. 1935; R.C.M. 1947, 93-6235; amd. Sec. 184, Ch. 575, L. 1981; amd. Sec. 2212, Ch. 56, L. 2009.**

70-28-216. Subsequent action — notice to original parties required. Whenever judgment in an action hereby authorized shall have been entered as to any real property, no other action relative to the same property or any part thereof maintained under this part shall be tried until proof shall first have been made to the court that all persons who appeared in the first action or their successors in interest have been personally served with the papers mentioned in 70-28-209, either within or without this state, more than 1 month before the time to plead expired.

History: **En. Sec. 13, Ch. 15, L. 1915; re-en. Sec. 9513, R.C.M. 1921; re-en. Sec. 9513, R.C.M. 1935; R.C.M. 1947, 93-6237.**

Part 3
Entry Townsite Deeds

70-28-301. Entry townsite land defined. "Entry townsite land" means land upon which an entry was made on or before July 1, 1921, by a probate court of any county in the territory or state of Montana for a townsite and a patent for the townsite was issued by the United States to the probate court or judge under the provisions of an act of congress entitled "An Act for the Relief of the Inhabitants of Cities and Towns Upon Public Lands", approved March 2, 1867, or other and subsequent acts of congress relating to entering lands for townsite purposes.

History: **En. Sec. 1, Ch. 102, L. 1981.**

70-28-302. Petition for deed — qualified claimants. A person may petition for a deed to a lot on entry townsite land from the district court of the county in which the entry townsite land is located if:

(1) the claimant entered the lot and is in possession of the lot; or

(2) the claimant is a successor in interest, by purchase or other lawful method of transferring an interest in land, of a person who originally entered the lot.

History: **En. Sec. 2, Ch. 102, L. 1981.**

70-28-303. Notice requirements. Upon petition by a claimant for a deed to a lot on entry townsite land, the claimant shall provide published notice of the claim, notice filed with the county clerk and recorder, and personal service as may be required for quiet title actions under Title 70, chapter 28, part 1.

History: **En. Sec. 3, Ch. 102, L. 1981; amd. Sec. 2213, Ch. 56, L. 2009.**

70-28-304. Judge to issue deed — requirements. If there are no valid conflicting claims to the lot on the entry townsite, the district court judge, as ex officio probate judge of the county, shall issue the claimant a good and sufficient deed for the lot on the entry townsite land upon finding in a hearing that:

(1) the petitioner is a qualified claimant under 70-28-302; and

(2) (a) no deed has been issued by a probate or district court judge of the county where the entry townsite land is located for the claimed lot; or

(b) a deed for the claimed lot has been issued but not recorded and has been lost or cannot be found.

History: **En. Sec. 4, Ch. 102, L. 1981.**

CHAPTER 29
PARTITION OF REAL PROPERTY

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Part 1
Preliminary Procedure

70-29-101. Action for partition authorized — who may bring. When several cotenants hold and are in possession of real property as joint tenants or tenants in common, in which one or more of them have an estate of inheritance or for life or lives or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof if it appears that a partition cannot be made without a great prejudice to the owners.

History: En. Sec. 492, p. 140, Bannack Stat.; re-en. Sec. 264, p. 190, L. 1867; re-en. Sec. 313, p. 97, Cod. Stat. 1871; re-en. Sec. 364, p. 139, L. 1877; re-en. Sec. 364, 1st Div. Rev. Stat. 1879; re-en. Sec. 377, 1st Div. Comp. Stat. 1887; re-en. Sec. 1340, C. Civ. Proc. 1895; re-en. Sec. 6883, Rev. C. 1907; re-en. Sec. 9516, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 752; re-en. Sec. 9516, R.C.M. 1935; R.C.M. 1947, 93-6301.

70-29-102. Action by minor. (1) An action for the partition of real property may not be brought by a minor, except by the written authority of the district judge of the county in which the property or a part of the property is situated. The authority may not be given unless the district judge is satisfied, by affidavit or other competent evidence, that the interests of the minor will be promoted by bringing the action.

(2) A judgment for a partition may not be rendered in an action unless the court is satisfied that the interests of the minor will be promoted and that fact is expressly recited in the judgment.

(3) A guardian ad litem for a minor party, in an action for partition, may be appointed only by the court or judge and shall give an undertaking in a sum fixed by the judge for the faithful discharge of the guardian ad litem's trust. The undertaking must be approved by the judge and filed with the clerk.

History: En. Sec. 1341, C. Civ. Proc. 1895; re-en. Sec. 6884, Rev. C. 1907; re-en. Sec. 9517, R.C.M. 1921; re-en. Sec. 9517, R.C.M. 1935; R.C.M. 1947, 93-6302; amd. Sec. 4, Ch. 2, L. 1983; amd. Sec. 2214, Ch. 56, L. 2009.

Cross-References

Appointment of guardian, 25-5-301.
Enforcement of minor's rights, 41-1-202.

70-29-103. Complaint — contents. The interests of all the persons in the property, whether such persons be known or unknown, must be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties or the share or quantity of interest of any of the parties be unknown to the plaintiff or be uncertain or contingent or the ownership of the inheritance depend upon the executory devise or the remainder be a contingent remainder so that such parties cannot be named, that fact must be set forth in the complaint.

History: En. Sec. 493, p. 140, Bannack Stat.; re-en. Sec. 265, p. 190, L. 1867; re-en. Sec. 314, p. 97, Cod. Stat. 1871; re-en. Sec. 365, p. 139, L. 1877; re-en. Sec. 365, 1st Div. Rev. Stat. 1879; re-en. Sec. 378, 1st Div. Comp. Stat. 1887; re-en. Sec. 1344, C. Civ. Proc. 1895; re-en. Sec. 6887, Rev. C. 1907; re-en. Sec. 9520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 753; re-en. Sec. 9520, R.C.M. 1935; R.C.M. 1947, 93-6305.

70-29-104. Who must be parties — permissible plaintiffs. (1) The following must be parties to an action for partition:

(a) every person having an undivided share, in possession or otherwise, in the property as tenant in fee, for life, or for years;

(b) every person entitled to the reversion, remainder, or inheritance of an undivided share, after the determination of a particular estate therein;

(c) every person who by any contingency contained in a devise or grant or otherwise is or may become entitled to a beneficial interest in an undivided share thereof;

(d) every person having an inchoate right of dower in an undivided share in the property; and

(e) every person having a right of dower in the property or any part thereof which has not been admeasured.

(2) But no person other than a joint tenant or a tenant in common of the property shall be a plaintiff in the action.

History: En. Sec. 1342, C. Civ. Proc. 1895; re-en. Sec. 6885, Rev. C. 1907; re-en. Sec. 9518, R.C.M. 1921; re-en. Sec. 9518, R.C.M. 1935; R.C.M. 1947, 93-6303.

70-29-105. Who may be joined as defendants. (1) The plaintiff may make a tenant in dower, for life or for years, of the entire property or a creditor or other person having a lien or interest that attaches to the entire property a defendant in the action. In that case the final judgment may either award to a party the party's entire right and interest or the proceeds of the right or interest or may reserve and leave unaffected the party's right or interest or any portion of the right or interest.

(2) A person specified in this section who is not made a party is not affected by the judgment in the action.

History: En. Sec. 1343, C. Civ. Proc. 1895; re-en. Sec. 6886, Rev. C. 1907; re-en. Sec. 9519, R.C.M. 1921; re-en. Sec. 9519, R.C.M. 1935; R.C.M. 1947, 93-6304; amd. Sec. 2215, Ch. 56, L. 2009.

70-29-106. Unnecessary to join grantees or lienholders not of record. No person having a conveyance of or claiming a lien on the property or some part of it need be made a party to the action unless such conveyance or lien appear of record.

History: En. Sec. 266, p. 190, L. 1867; re-en. Sec. 315, p. 97, Cod. Stat. 1871; re-en. Sec. 366, p. 140, L. 1877; re-en. Sec. 366, 1st Div. Rev. Stat. 1879; re-en. Sec. 379, 1st Div. Comp. Stat. 1887; re-en. Sec. 1345, C. Civ. Proc. 1895; re-en. Sec. 6888, Rev. C. 1907; re-en. Sec. 9521, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 754; re-en. Sec. 9521, R.C.M. 1935; R.C.M. 1947, 93-6306.

70-29-107. Lienholders of record as parties. If it appears to the court, by the certificate of the clerk of the court and county clerk and recorder or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or encumbrances of record upon such real property or any part or portion thereof which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action by an amendment or supplemental complaint or appoint a referee to ascertain whether or not such liens or encumbrances have been paid or, if not paid, what amount remains due thereon and their order among the liens or encumbrances severally held by such persons and the parties to the action and whether the amount remaining due thereon has been secured in any manner and, if secured, the nature and extent of the security.

History: En. Sec. 501, p. 142, Bannack Stat.; en. Sec. 273, p. 191, L. 1867; re-en. Sec. 322, p. 98, Cod. Stat. 1871; re-en. Sec. 373, p. 142, L. 1877; re-en. Sec. 373, 1st Div. Rev. Stat. 1879; re-en. Sec. 386, 1st Div. Comp. Stat. 1887; re-en. Sec. 1353, C. Civ. Proc. 1895; re-en. Sec. 6896, Rev. C. 1907; re-en. Sec. 9529, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 761; re-en. Sec. 9529, R.C.M. 1935; R.C.M. 1947, 93-6314.

70-29-108. Lienholders of record to be notified. (1) The plaintiff shall cause a notice to be served a reasonable time prior to the day for appearance before the referee appointed, as provided in 70-29-107, on each person having outstanding liens of record who is not a party to the action to appear before the referee at a specified time and place to make proof by the person's own affidavit or otherwise of the amount due or to become due, contingently or absolutely, on the lien.

(2) If the person is absent or the person's residence is unknown, service may be made by publication or notice to the person's agents, under the direction of the court, in a proper manner.

(3) The report of the referee must be made to the court and must be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require.

History: En. Sec. 502, p. 142, Bannack Stat.; re-en. Sec. 274, p. 192, L. 1867; re-en. Sec. 323, p. 99, Cod. Stat. 1871; re-en. Sec. 374, p. 142, L. 1877; re-en. Sec. 374, 1st Div. Rev. Stat. 1879; re-en. Sec. 387, 1st Div. Comp. Stat. 1887; re-en. Sec. 1354, C. Civ. Proc. 1895; re-en. Sec. 6897, Rev. C. 1907; re-en. Sec. 9530, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 762; re-en. Sec. 9530, R.C.M. 1935; R.C.M. 1947, 93-6315; amd. Sec. 2216, Ch. 56, L. 2009.

70-29-109. Notice of action to be filed with clerk — lis pendens. (1) Immediately after filing the complaint in the district court, the plaintiff must file in the office of the county clerk and recorder of the county or of the several counties in which the property is situated a notice of the pendency of the action containing:

(a) the names of the parties so far as known;
(b) the object of the action; and
(c) a description of the property to be affected thereby.

(2) From the time of filing such notice, all persons shall be deemed to have notice of the pendency of the action.

History: **En. Sec. 495, p. 141, Bannack Stat.; re-en. Sec. 267, p. 190, L. 1867; re-en. Sec. 316, p. 97, Cod. Stat. 1871; re-en. Sec. 367, p. 140, L. 1877; re-en. Sec. 367, 1st Div. Rev. Stat. 1879; re-en. Sec. 380, 1st Div. Comp. Stat. 1887; amd. Sec. 1346, C. Civ. Proc. 1895; re-en. Sec. 6889, Rev. C. 1907; re-en. Sec. 9522, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 755; re-en. Sec. 9522, R.C.M. 1935; R.C.M. 1947, 93-6307.**

70-29-110. Summons — to whom directed. The summons must be directed to all the joint tenants and tenants in common and all persons having an interest in or any liens of record by mortgage, judgment, or otherwise upon the property or upon any particular portion thereof and generally to all persons unknown who have or claim any interest in the property.

History: **En. Sec. 496, p. 141, Bannack Stat.; re-en. Sec. 268, p. 190, L. 1867; re-en. Sec. 317, p. 97, Cod. Stat. 1871; re-en. Sec. 368, p. 140, L. 1877; re-en. Sec. 368, 1st Div. Rev. Stat. 1879; re-en. Sec. 381, 1st Div. Comp. Stat. 1887; re-en. Sec. 1347, C. Civ. Proc. 1895; re-en. Sec. 6890, Rev. C. 1907; re-en. Sec. 9523, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 756; re-en. Sec. 9523, R.C.M. 1935; R.C.M. 1947, 93-6308.**

70-29-111. Unknown and out-of-state parties — how served. (1) If a party having a share or interest is unknown or any one of the known parties resides out of the state or cannot be found therein and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases.

(2) When publication is made, the summons, as published, must be accompanied by a general statement of the nature of the action and a brief description of the property which is the subject of the action.

History: **En. Sec. 497, p. 141, Bannack Stat.; re-en. Sec. 269, p. 191, L. 1867; re-en. Sec. 318, p. 98, C. Stat. 1871; re-en. Sec. 369, p. 140, L. 1877; re-en. Sec. 369, 1st Div. Rev. Stat. 1879; re-en. Sec. 382, 1st Div. Comp. Stat. 1887; amd. Sec. 1348, C. Civ. Proc. 1895; re-en. Sec. 6891, Rev. C. 1907; re-en. Sec. 9524, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 757; re-en. Sec. 9524, R.C.M. 1935; R.C.M. 1947, 93-6309.**

70-29-112. Answer — contents. The defendants who have been personally served with the summons and a copy of the complaint or who have appeared without such service must set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property, and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they are deemed to have waived their right to such lien unless they state:

(1) the original amount and date of the same and the sum remaining due thereon;
(2) whether the same has been secured in any other way or not; and
(3) if secured, the nature and extent of such security.

History: **En. Sec. 498, p. 141, Bannack Stat.; amd. Sec. 270, p. 191, L. 1867; re-en. Sec. 319, p. 98, Cod. Stat. 1871; re-en. Sec. 370, p. 141, L. 1877; re-en. Sec. 370, 1st Div. Rev. Stat. 1879; re-en. Sec. 383, 1st Div. Comp. Stat. 1887; amd. Sec. 1349, C. Civ. Proc. 1895; re-en. Sec. 6892, Rev. C. 1907; re-en. Sec. 9525, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 758; re-en. Sec. 9525, R.C.M. 1935; R.C.M. 1947, 93-6310.**

70-29-113. Death or incompetency of parties — proceedings not delayed. (1) If during the pendency of the action a party dies, is committed pursuant to 53-21-127, or otherwise becomes incompetent, the proceedings may not for that cause be delayed or suspended, but the attorney who has appeared for the party may continue to represent the party's interest. If any party has not appeared by an attorney, the court shall appoint an attorney to represent the interest that was held by the party until the party's heirs, legal representatives, or successors in interest have appeared in the action.

(2) An attorney appointed pursuant to subsection (1) must be allowed by the court a reasonable compensation for the attorney's services. The compensation may be taxed as costs against the share or interest represented by the attorney and may be adjudged a lien on the share or interest, in the discretion of the court.

History: **En. Sec. 1357, C. Civ. Proc. 1895; re-en. Sec. 6900, Rev. C. 1907; re-en. Sec. 9533, R.C.M. 1921; re-en. Sec. 9533, R.C.M. 1935; R.C.M. 1947, 93-6318; amd. Sec. 23, Ch. 115, L. 1979; amd. Sec. 36, Ch. 490, L. 1997.**

Part 2
Trial and Judgment

70-29-201. Trial of title or interest of parties. The right of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in the partition action. The title or interest of the plaintiff in the property, as stated in the complaint, may be controverted by the answer. The title or interest of any defendant in the property, as stated in the complaint, may also be controverted by the defendant's answer or the answer of any other defendant, and the title or interest of any defendant, as stated in that defendant's answer, may be controverted by the answer of any other defendant and the issues joined as prescribed in Title 25, which may be tried before a jury if the court directs.

History: En. Sec. 499, p. 141, Bannack Stat.; re-en. Sec. 271, p. 191, L. 1867; re-en. Sec. 320, p. 98, Cod. Stat. 1871; re-en. Sec. 371, p. 140, L. 1877; re-en. Sec. 371, 1st Div. Rev. Stat. 1879; re-en. Sec. 384, 1st Div. Comp. Stat. 1887; en. Sec. 1350, C. Civ. Proc. 1895; re-en. Sec. 6893, Rev. C. 1907; re-en. Sec. 9526, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 759; re-en. Sec. 9526, R.C.M. 1935; R.C.M. 1947, 93-6311; amd. Sec. 2217, Ch. 56, L. 2009.

70-29-202. Court to order sale or partition — appointment of referees. (1) If it be alleged in the complaint and established by evidence or if it appear by the evidence without such allegation in the complaint to the satisfaction of the court that the property or any part is so situated that the partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proofs being made, it must order a partition according to the respective rights of the parties as ascertained by the court and appoint three referees therefor and must designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

(2) The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this chapter, and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

History: (1)En. Sec. 503, p. 142, Bannack Stat.; re-en. Sec. 275, p. 192, L. 1867; re-en. Sec. 324, p. 99, Cod. Stat. 1871; re-en. Sec. 375, p. 142, L. 1877; re-en. Sec. 375, 1st Div. Rev. Stat. 1879; re-en. Sec. 388, 1st Div. Comp. Stat. 1887; re-en. Sec. 1355, C. Civ. Proc. 1895; re-en. Sec. 6898, Rev. C. 1907; re-en. Sec. 9531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 763; re-en. Sec. 9531, R.C.M. 1935; Sec. 93-6316, R.C.M. 1947; (2)En. Sec. 537, p. 148, Bannack Stat.; re-en. Sec. 309, p. 196, L. 1867; re-en. Sec. 358, p. 104, L. 1871; rep. Sec. 674, p. 215, L. 1877; en. Sec. 1395, C. Civ. Proc. 1895; re-en. Sec. 6938, Rev. C. 1907; re-en. Sec. 9571, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 797; re-en. Sec. 9571, R.C.M. 1935; Sec. 93-6356, R.C.M. 1947; R.C.M. 1947, 93-6316, 93-6356.

70-29-203. Determination of title required before judgment of sale. When a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the court before the judgment of sale can be made, and where service of the summons has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered, except where there are several unknown parties having an interest in the property, their rights may be considered together in the action and not as between themselves.

History: En. Sec. 499, p. 141, Bannack Stat.; re-en. Sec. 271, p. 191, L. 1867; re-en. Sec. 320, p. 98, Cod. Stat. 1871; re-en. Sec. 371, p. 140, L. 1877; re-en. Sec. 371, 1st Div. Rev. Stat. 1879; re-en. Sec. 384, 1st Div. Comp. Stat. 1887; en. Sec. 1351, C. Civ. Proc. 1895; re-en. Sec. 6894, Rev. C. 1907; re-en. Sec. 9527, R.C.M. 1921; re-en. Sec. 9527, R.C.M. 1935; R.C.M. 1947, 93-6312.

70-29-204. Partial partition. Whenever from any cause it is in the opinion of the court impracticable or highly inconvenient to make a complete partition in the first instance among all the parties in interest, the court may first ascertain and determine the shares or interests respectively held by the original cotenants and thereupon adjudge and cause a partition to be made as if such original cotenants were the parties and sole parties in interest and the only parties to the action and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof, as they may desire.

History: En. Sec. 272, p. 191, L. 1867; re-en. Sec. 321, p. 98, Cod. Stat. 1871; re-en. Sec. 372, p. 141, L. 1877; re-en. Sec. 372, 1st Div. Rev. Stat. 1879; re-en. Sec. 385, 1st Div. Comp. Stat. 1887; re-en. Sec. 1352, C. Civ. Proc. 1895; re-en. Sec. 6895, Rev. C. 1907; re-en. Sec. 9528, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 760; re-en. Sec. 9528, R.C.M. 1935; R.C.M. 1947, 93-6313.

70-29-205. Partition according to rights of parties — roads. (1) In making partition, the referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.

(2) Before making partition or sale, the referees may, whenever it will be for the advantage of those interested, set apart a portion of the property for a way, road, or street, and the portion so set apart shall not be assigned to any of the parties or sold but shall remain an open and

public way, road, or street unless the referees shall set the same apart as a private way for the use of the parties interested or some of them, their heirs, and assigns, in which case it shall remain such private way. Whenever the referees have laid out on any tract of land roads sufficient, in the judgment of said referees, to accommodate the public and private wants, they shall report that fact to the court, and upon the confirmation of their report all other roads on said tract shall cease to be public highways.

History: En. Sec. 504, p. 143, Bannack Stat.; re-en. Sec. 276, p. 192, L. 1867; re-en. Sec. 325, p. 99, Cod. Stat. 1871; re-en. Sec. 376, p. 143, L. 1877; re-en. Sec. 376, 1st Div. Rev. Stat. 1879; re-en. Sec. 389, 1st Div. Comp. Stat. 1887; en. Sec. 1358, C. Civ. Proc. 1895; re-en. Sec. 6901, Rev. C. 1907; re-en. Sec. 9534, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 764; re-en. Sec. 9534, R.C.M. 1935; R.C.M. 1947, 93-6319.

70-29-206. Procedure in relation to lots and subdivisions. When the site of an incorporated city or town is included within the exterior boundaries of the property to be partitioned, on said fact being established by evidence, the following proceedings shall be had:

(1) The court shall thereupon direct the referees to survey and appraise the entire property to be partitioned by actual lots and subdivisions then existing in the actual possession of the several tenants in common, exclusive of the value of improvements thereon, first setting apart necessary portions of the property for ways, roads, and streets, as in 70-29-205 provided, and to report such survey and separate appraisement on each lot and subdivision to the court. The court may confirm, change, modify, or set aside the report in whole or in part and, if necessary, appoint new referees.

(2) When, after the final confirmation of the report of such survey and appraisement, it shall appear by evidence to the satisfaction of the court that an equitable partition of the whole property is impracticable and a sale of the site of such city, town, or any portion thereof will be for the best interest of the owners of the whole property, it shall order a sale thereof; provided that within 60 days thereafter any tenant in common or tenants in common having improvements erected on any town or city lot or subdivision included in such order of sale shall have the prior right to purchase the same at such appraised valuation and pay into court the amount so appraised as the value thereof, and upon such payment, the title shall vest in such purchaser or purchasers, and the court shall cause to be executed by said referees a deed for such lot or subdivision in fee and in severalty to such purchaser or purchasers. Such further proceedings shall then be had as to the remainder of the property and the money so paid to the court as by this chapter provided.

History: En. Sec. 1356, C. Civ. Proc. 1895; re-en. Sec. 6899, Rev. C. 1907; re-en. Sec. 9532, R.C.M. 1921; re-en. Sec. 9532, R.C.M. 1935; R.C.M. 1947, 93-6317.

70-29-207. Allotment of shares of land — improvements. In all cases the court shall direct the referees, in making partition of land, to allot the share of each of the parties owning an interest in the whole or in any part of the premises sought to be partitioned and to locate the share of each cotenant so as to embrace as far as practicable the improvements made by such cotenant upon the property, and the value of the improvements made by the tenants in common must be excluded from the valuation in making allotments, and the land must be valued without regard to such improvements, in case the same can be done without material injury to the rights and interests of the other tenants in common owning such land.

History: En. Sec. 1359, C. Civ. Proc. 1895; re-en. Sec. 6902, Rev. C. 1907; re-en. Sec. 9535, R.C.M. 1921; re-en. Sec. 9535, R.C.M. 1935; R.C.M. 1947, 93-6320(part).

70-29-208. Allotment of land to grantee of tenant in common. Whenever it appears in an action for the partition of lands that one or more of the tenants in common, being the owner of an undivided interest in the tract of land sought to be partitioned, has sold to another person a specific tract by metes and bounds out of the common land and executed to the purchaser a deed of conveyance purporting to convey the whole title to the specific tract to the purchaser in fee and in severalty, the land described in the deed must be allotted and set apart in partition to the purchaser or the purchaser's heirs or assigns or in another manner that makes the deed effectual as a conveyance of the whole title to the segregated parcel if the tract or tracts of land can be allotted or set apart without material injury to the rights and interests of the other cotenants who may not have joined in the conveyance.

History: En. Sec. 1359, C. Civ. Proc. 1895; re-en. Sec. 6902, Rev. C. 1907; re-en. Sec. 9535, R.C.M. 1921; re-en. Sec. 9535, R.C.M. 1935; R.C.M. 1947, 93-6320(part); amd. Sec. 2218, Ch. 56, L. 2009.

70-29-209. Compensation of one party by another in certain cases of partition. (1) When it appears that a partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them and a partition is ordered, the court may adjudge compensation to be made by one party to another on account of the inequality. However, the compensation may not be required to be made to others by owners unknown or by a minor unless it appears that the minor has personal property sufficient for that purpose and that the minor's interest will be promoted.

(2) In all cases, the court may make compensatory adjustment between the respective parties according to the ordinary principles of equity.

History: En. Sec. 532, p. 147, Bannack Stat.; re-en. Sec. 304, p. 196, L. 1867; re-en. Sec. 353, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1387, C. Civ. Proc. 1895; re-en. Sec. 6930, Rev. C. 1907; re-en. Sec. 9563, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 792; re-en. Sec. 9563, R.C.M. 1935; R.C.M. 1947, 93-6348; amd. Sec. 5, Ch. 2, L. 1983; amd. Sec. 2219, Ch. 56, L. 2009.

70-29-210. Consent of guardian to share of ward. The general guardian of a minor and the guardian entitled to the custody and management of the estate of a person committed pursuant to 53-21-127 or other person adjudged incapable of conducting the person's own affairs, who is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize the person being made a party to an action, may agree upon the share to be set off to the minor or other person entitled to the share. The guardian may execute a release, in the person's behalf, to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

History: En. Sec. 535, p. 148, Bannack Stat.; re-en. Sec. 307, p. 196, L. 1867; re-en. Sec. 356, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1390, C. Civ. Proc. 1895; re-en. Sec. 6933, Rev. C. 1907; re-en. Sec. 9566, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 795; re-en. Sec. 9566, R.C.M. 1935; R.C.M. 1947, 93-6351; amd. Sec. 24, Ch. 115, L. 1979; amd. Sec. 6, Ch. 2, L. 1983; amd. Sec. 37, Ch. 490, L. 1997.

Cross-References

UPC — persons under disability — guardianship and conservatorship, Title 72, ch. 5.

70-29-211. Referees to make report. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust and describing the property divided and the shares allotted to each party with a particular description of each share.

History: En. Sec. 505, p. 143, Bannack Stat.; re-en. Sec. 277, p. 192, L. 1867; re-en. Sec. 326, p. 99, Cod. Stat. 1871; re-en. Sec. 377, p. 143, L. 1877; re-en. Sec. 377, 1st Div. Rev. Stat. 1879; re-en. Sec. 390, 1st Div. Comp. Stat. 1887; re-en. Sec. 1360, C. Civ. Proc. 1895; re-en. Sec. 6903, Rev. C. 1907; re-en. Sec. 9536, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 765; re-en. Sec. 9536, R.C.M. 1935; R.C.M. 1947, 93-6321.

70-29-212. Judgment upon confirmation of report — effect. (1) The court may confirm, change, modify, or set aside the report and if necessary appoint new referees.

(2) Upon the report being confirmed, judgment must be rendered that the partition is effectual forever. The judgment is binding and conclusive on all:

(a) persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided or any part of the property, as owners in fee or as tenants for life or for years or as entitled to the reversion, remainder, or the inheritance of the property or any part of the property after the determination of a particular estate in the property, and who by any contingency may be entitled to a beneficial interest in the property or who have an interest in any undivided share of the property as tenants for years or for life;

(b) persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication; and

(c) other persons claiming from the parties or persons or either of them.

(3) A judgment is not invalidated by reason of the death of any party before final judgment or decree, but the judgment or decree is as conclusive against the heirs, legal representatives, or assigns of the decedent as if it had been entered before the decedent's death.

History: En. Sec. 506, p. 143, Bannack Stat.; amd. Sec. 278, p. 192, L. 1867; re-en. Sec. 327, p. 100, Cod. Stat. 1871; amd. Sec. 378, p. 143, L. 1877; re-en. Sec. 378, 1st Div. Rev. Stat. 1879; re-en. Sec. 391, 1st Div. Comp. Stat. 1887; en. Sec. 1361, C. Civ. Proc. 1895; re-en. Sec. 6904, Rev. C. 1907; re-en. Sec. 9537, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 766; re-en. Sec. 9537, R.C.M. 1935; R.C.M. 1947, 93-6322; amd. Sec. 2220, Ch. 56, L. 2009.

70-29-213. Judgment not to affect certain tenants for years. The judgment does not affect tenants for years, less than 10, to the whole of the property which is the subject of the partition.

History: En. Sec. 507, p. 143, Bannack Stat.; re-en. Sec. 279, p. 193, L. 1867; re-en. Sec. 328, p. 100, Cod. Stat. 1871; re-en. Sec. 379, p. 144, L. 1877; re-en. Sec. 379, 1st Div. Rev. Stat. 1879; re-en. Sec. 392, 1st Div. Comp. Stat. 1887; re-en. Sec. 1362, C. Civ. Proc. 1895; re-en. Sec. 6905, Rev. C. 1907; re-en. Sec. 9538, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 767; re-en. Sec. 9538, R.C.M. 1935; R.C.M. 1947, 93-6323.

70-29-214. Status of estate for life or years when partial sale ordered. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

History: En. Sec. 510, p. 143, Bannack Stat.; re-en. Sec. 282, p. 193, L. 1867; re-en. Sec. 331, p. 100, Cod. Stat. 1871; re-en. Sec. 382, p. 144, L. 1877; re-en. Sec. 382, 1st Div. Rev. Stat. 1879; re-en. Sec. 395, 1st Div. Comp. Stat. 1887; re-en. Sec. 1365, C. Civ. Proc. 1895; re-en. Sec. 6908, Rev. C. 1907; re-en. Sec. 9541, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 770; re-en. Sec. 9541, R.C.M. 1935; R.C.M. 1947, 93-6326.

70-29-215. Lien on undivided interest — status after partition. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party, but such share must be first charged with its just proportion of the costs of the partition in preference to such lien.

History: En. Sec. 509, p. 143, Bannack Stat.; re-en. Sec. 281, p. 193, L. 1867; re-en. Sec. 330, p. 100, Cod. Stat. 1871; re-en. Sec. 381, p. 144, L. 1877; re-en. Sec. 381, 1st Div. Rev. Stat. 1879; re-en. Sec. 394, 1st Div. Comp. Stat. 1887; re-en. Sec. 1364, C. Civ. Proc. 1895; re-en. Sec. 6907, Rev. C. 1907; re-en. Sec. 9540, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 769; re-en. Sec. 9540, R.C.M. 1935; R.C.M. 1947, 93-6325.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

70-29-216. Abstract of title — when cost of allowed — filing and inspection. (1) If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned and the abstract has been procured by the plaintiff or if the plaintiff has failed to have the abstract made before the commencement of the action and any one of the defendants has had the abstract made, the cost of the abstract, with interest on the cost from the time the abstract is subject to the inspection of the respective parties to the action, must be allowed and taxed.

(2) Whenever the abstract is procured by the plaintiff, before the commencement of the action the plaintiff shall file with the complaint a notice that an abstract of the title has been made and is subject to the inspection and use of all the parties to the action, designating in the notice where the abstract will be kept for inspection. However, if the plaintiff has failed to procure the abstract before commencing the action and any defendant procures the abstract to be made, the defendant shall, as soon as the defendant has directed the abstract to be made, file a notice of the procurement in the action with the clerk of the court, stating who is making the abstract and where it will be kept when finished.

(3) The court or judge may direct, from time to time during the progress of the action, who must have the custody of the abstract.

History: En. Sec. 1397, C. Civ. Proc. 1895; re-en. Sec. 6940, Rev. C. 1907; re-en. Sec. 9573, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 799; re-en. Sec. 9573, R.C.M. 1935; R.C.M. 1947, 93-6358; amd. Sec. 2221, Ch. 56, L. 2009.

70-29-217. Abstract — how made and verified. The abstract mentioned in 70-29-216 may be made by any competent searcher of records and need not be certified by the county clerk and recorder or other officer, but instead of certification it must be verified by the affidavit of the person making it to the effect that the person believes it to be correct. However, the abstract may be corrected from time to time, if found incorrect, under the direction of the court.

History: En. Sec. 1398, C. Civ. Proc. 1895; re-en. Sec. 6941, Rev. C. 1907; re-en. Sec. 9574, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 800; re-en. Sec. 9574, R.C.M. 1935; R.C.M. 1947, 93-6359; amd. Sec. 2222, Ch. 56, L. 2009.

70-29-218. Costs of partition — apportionment among parties — lien. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants for the common benefit, fees of referees, or other disbursements must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case, they shall be a lien on the several shares and the judgment may be enforced by execution against such shares and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto or any of them.

History: En. Sec. 536, p. 148, Bannack Stat.; re-en. Sec. 308, p. 196, L. 1867; re-en. Sec. 357, p. 104, L. 1871; rep. Sec. 674, p. 215, L. 1877; en. Sec. 1394, C. Civ. Proc. 1895; re-en. Sec. 6937, Rev. C. 1907; re-en. Sec. 9570, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 796; re-en. Sec. 9570, R.C.M. 1935; R.C.M. 1947, 93-6355.

Cross-References

Civil procedure — costs, Title 25, ch. 10.

70-29-219. Expenses of referees and surveyor. The expenses of the referees, including those of a surveyor and the surveyor's assistants, when employed, must be ascertained and allowed by the court, and the amount of those expenses, together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably.

History: En. Sec. 508, p. 143, Bannack Stat.; re-en. Sec. 280, p. 193, L. 1867; re-en. Sec. 329, p. 100, Cod. Stat. 1871; re-en. Sec. 380, p. 144, L. 1877; re-en. Sec. 380, 1st Div. Rev. Stat. 1879; re-en. Sec. 393, 1st Div. Comp. Stat. 1887; re-en. Sec. 1363, C. Civ. Proc. 1895; re-en. Sec. 6906, Rev. C. 1907; re-en. Sec. 9539, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 768; re-en. Sec. 9539, R.C.M. 1935; R.C.M. 1947, 93-6324; amd. Sec. 2223, Ch. 56, L. 2009.

70-29-220. Disbursements by party — interest allowed. Whenever during the progress of the action for partition any disbursements shall have been made under the direction of the court or the judge thereof by a party thereto, interest must be allowed thereon from the time of making such disbursements.

History: En. Sec. 1399, C. Civ. Proc. 1895; re-en. Sec. 6942, Rev. C. 1907; re-en. Sec. 9575, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 801; re-en. Sec. 9575, R.C.M. 1935; R.C.M. 1947, 93-6360.

70-29-221. Expenses of previous litigation. If it appears that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common for the protection, confirmation, or perfecting of the title or setting the boundaries or making a survey or surveys of the estate partitioned, the court shall allow to the parties to the action who have paid the expense of the litigation or other proceedings all the expenses necessarily incurred in the litigation or proceedings, except counsel fees, that have accrued to the common benefit of the other tenants in common, with interest on the expenses from the date of making the expenditures, and the expenses must be pleaded and allowed by the court and included in the final judgment and are a lien upon the share of each tenant, respectively, in proportion to the tenant's interest and must be enforced in the same manner that taxable costs of partition are taxed and collected.

History: En. Sec. 1396, C. Civ. Proc. 1895; re-en. Sec. 6939, Rev. C. 1907; re-en. Sec. 9572, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 798; re-en. Sec. 9572, R.C.M. 1935; R.C.M. 1947, 93-6357; amd. Sec. 2224, Ch. 56, L. 2009.

Part 3
Sale and Disposition of Proceeds

70-29-301. Sale to be at public auction — notice. All sales of real property made by referees under this chapter must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that must be stated in the notice.

History: En. Sec. 515, p. 145, Bannack Stat.; re-en. Sec. 287, p. 194, L. 1867; re-en. Sec. 336, p. 101, Cod. Stat. 1871; re-en. Sec. 387, p. 146, L. 1877; re-en. Sec. 387, 1st Div. Rev. Stat. 1879; re-en. Sec. 400, 1st Div. Comp. Stat. 1887; re-en. Sec. 1370, C. Civ. Proc. 1895; re-en. Sec. 6913, Rev. C. 1907; re-en. Sec. 9546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 775; re-en. Sec. 9546, R.C.M. 1935; R.C.M. 1947, 93-6331.

Cross-References

Notice of sale on execution, 25-13-701.

70-29-302. Terms of sale to be made known. In all cases of sales of property, the terms must be made known at the time; and if the premises consist of distinct farms and lots, they must be sold separately.

History: En. Sec. 522, p. 146, Bannack Stat.; re-en. Sec. 294, p. 195, L. 1867; re-en. Sec. 343, p. 102, Cod. Stat. 1871; re-en. Sec. 394, p. 147, L. 1877; re-en. Sec. 394, 1st Div. Rev. Stat. 1879; re-en. Sec. 407, 1st Div. Comp. Stat. 1887; re-en. Sec. 1377, C. Civ. Proc. 1895; re-en. Sec. 6920, Rev. C. 1907; re-en. Sec. 9553, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 782; re-en. Sec. 9553, R.C.M. 1935; R.C.M. 1947, 93-6338.

70-29-303. Who may not be purchasers. (1) Neither of the referees nor any person for the benefit of either of them can be interested in any purchase, nor can a guardian of a minor party be interested in the purchase of any real property being the subject of the action except for the benefit of the minor.

(2) All sales contrary to the provisions of this section are void.

History: En. Sec. 523, p. 146, Bannack Stat.; re-en. Sec. 295, p. 195, L. 1867; re-en. Sec. 344, p. 102, Cod. Stat. 1871; re-en. Sec. 395, p. 147, L. 1877; re-en. Sec. 395, 1st Div. Rev. Stat. 1879; re-en. Sec. 408, 1st Div. Comp. Stat. 1887; re-en. Sec. 1378, C. Civ. Proc. 1895; re-en. Sec. 6921, Rev. C. 1907; re-en. Sec. 9554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 783; re-en. Sec. 9554, R.C.M. 1935; R.C.M. 1947, 93-6339; amd. Sec. 7, Ch. 2, L. 1983.

70-29-304. Party or encumbrancer as purchaser. When a party entitled to a share of the property or an encumbrancer entitled to have a lien paid out of the sale becomes a purchaser, the referees may take the purchaser's receipt for as much of the proceeds of the sale as belongs to the purchaser.

History: En. Sec. 526, p. 146, Bannack Stat.; re-en. Sec. 298, p. 195, L. 1867; re-en. Sec. 347, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1381, C. Civ. Proc. 1895; re-en. Sec. 6924, Rev. C. 1907; re-en. Sec. 9557, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 786; re-en. Sec. 9557, R.C.M. 1935; R.C.M. 1947, 93-6342; amd. Sec. 2225, Ch. 56, L. 2009.

70-29-305. Court to direct terms of credit and investment. The court must, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit and for that portion of which the purchase money is required by the provisions herein contained to be invested for the benefit of unknown owners, minors, or parties out of this state.

History: En. Sec. 516, p. 145, Bannack Stat.; re-en. Sec. 288, p. 194, L. 1867; re-en. Sec. 337, p. 101, Cod. Stat. 1871; re-en. Sec. 388, p. 146, L. 1877; re-en. Sec. 388, 1st Div. Rev. Stat. 1879; re-en. Sec. 401, 1st Div. Comp. Stat. 1887; re-en. Sec. 1371, C. Civ. Proc. 1895; re-en. Sec. 6914, Rev. C. 1907; re-en. Sec. 9547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 776; re-en. Sec. 9547, R.C.M. 1935; R.C.M. 1947, 93-6332; amd. Sec. 8, Ch. 2, L. 1983.

70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of parts of the property that are directed by the court to be sold on credit for the:

(1) shares of any known owner of full age, in the name of the owner;

(2) shares of a minor, in the name of the guardian of the minor; and

(3) other shares, in the name of the clerk of the court of the county and the clerk's successors in office.

History: En. Sec. 517, p. 145, Bannack Stat.; re-en. Sec. 289, p. 194, L. 1867; re-en. Sec. 338, p. 101, Cod. Stat. 1871; re-en. Sec. 389, p. 146, L. 1877; re-en. Sec. 389, 1st Div. Rev. Stat. 1879; re-en. Sec. 402, 1st Div. Comp. Stat. 1887; re-en. Sec. 1372, C. Civ. Proc. 1895; re-en. Sec. 6915, Rev. C. 1907; re-en. Sec. 9548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 777; re-en. Sec. 9548, R.C.M. 1935; R.C.M. 1947, 93-6333; amd. Sec. 9, Ch. 2, L. 1983; amd. Sec. 2226, Ch. 56, L. 2009.

70-29-307. Security taken and investment made in name of clerk. When the security of the proceeds of sale is taken or when an investment of any proceeds is made, it must be done, except as otherwise provided in this part, in the name of the clerk of the court where the papers are filed and the clerk's successors in office, who shall hold the proceeds for the use and benefit of the persons interested subject to the order of the court.

History: En. Sec. 529, p. 147, Bannack Stat.; re-en. Sec. 301, p. 195, L. 1867; re-en. Sec. 350, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1384, C. Civ. Proc. 1895; re-en. Sec. 6927, Rev. C. 1907; re-en. Sec. 9560, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 789; re-en. Sec. 9560, R.C.M. 1935; R.C.M. 1947, 93-6345; amd. Sec. 2227, Ch. 56, L. 2009.

70-29-308. Agreement of parties as to security. When security is taken by the referees on a sale and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of and payable to the parties respectively entitled thereto and must be delivered to such parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the clerk of the court.

History: En. Sec. 530, p. 147, Bannack Stat.; re-en. Sec. 302, p. 196, L. 1867; re-en. Sec. 351, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1385, C. Civ. Proc. 1895; re-en. Sec. 6928, Rev. C. 1907; re-en. Sec. 9561, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 790; re-en. Sec. 9561, R.C.M. 1935; R.C.M. 1947, 93-6346.

70-29-309. Referees' report of sale. (1) After completing a sale of the property or any part thereof ordered to be sold, the referees must report the same to the court with:

(a) a description of the different parcels of land sold to each purchaser;
(b) the price paid or secured;
(c) the terms and conditions of the sale; and
(d) the securities, if any, taken.

(2) The report must be filed in the office of the clerk of the court and a certified copy thereof in the office of the county clerk and recorder of the county where the property is situated.

History: En. Sec. 524, p. 146, Bannack Stat.; re-en. Sec. 296, p. 195, L. 1867; re-en. Sec. 345, p. 102, Cod. Stat. 1871; re-en. Sec. 396, p. 147, L. 1877; re-en. Sec. 396, 1st Div. Rev. Stat. 1879; re-en. Sec. 409, 1st Div. Comp. Stat. 1887; re-en. Sec. 1379, C. Civ. Proc. 1895; re-en. Sec. 6922, Rev. C. 1907; re-en. Sec. 9555, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 784; re-en. Sec. 9555, R.C.M. 1935; R.C.M. 1947, 93-6340.

70-29-310. Execution of conveyances and taking of security. If the sale be confirmed by the court, an order must be entered directing the referees to execute conveyances and take securities pursuant to such sale which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of sale.

History: En. Sec. 525, p. 146, Bannack Stat.; re-en. Sec. 297, p. 195, L. 1867; re-en. Sec. 346, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1380, C. Civ. Proc. 1895; re-en. Sec. 6923, Rev. C. 1907; re-en. Sec. 9556, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 785; re-en. Sec. 9556, R.C.M. 1935; R.C.M. 1947, 93-6341.

70-29-311. Conveyances to be recorded — bar against parties. The conveyances must be recorded in the county where the premises are situated and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them or either of them and against all persons having unrecorded deeds or liens at the commencement of the action.

History: En. Sec. 527, p. 146, Bannack Stat.; re-en. Sec. 299, p. 195, L. 1867; re-en. Sec. 348, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1382, C. Civ. Proc. 1895; re-en. Sec. 6925, Rev. C. 1907; re-en. Sec. 9558, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 787; re-en. Sec. 9558, R.C.M. 1935; R.C.M. 1947, 93-6343.

70-29-312 through 70-29-320 reserved.

70-29-321. Priorities for application of proceeds. The proceeds of the sale of encumbered property must be applied under the direction of the court as follows:

(1) to pay its just proportion of the general costs of the action;
(2) to pay the costs of the reference;
(3) to satisfy and cancel of record the several liens in their order of priority by payment of the sums due and to become due, the amount due to be verified by affidavit at the time of payment;
(4) the residue among the owners of the property sold, according to their respective shares therein.

History: En. Sec. 511, p. 144, Bannack Stat.; re-en. Sec. 283, p. 193, L. 1867; re-en. Sec. 332, p. 100, Cod. Stat. 1871; re-en. Sec. 383, p. 145, L. 1877; re-en. Sec. 383, 1st Div. Rev. Stat. 1879; re-en. Sec. 396, 1st Div. Comp. Stat. 1887; re-en. Sec. 1366, C. Civ. Proc. 1895; re-en. Sec. 6909, Rev. C. 1907; re-en. Sec. 9542, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 771; re-en. Sec. 9542, R.C.M. 1935; R.C.M. 1947, 93-6327.

70-29-322. Other securities to be exhausted first. Whenever any party to an action who holds a lien upon the property or any part thereof has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale or may order a just deduction to be made from the amount of the lien on the property on account thereof.

History: En. Sec. 512, p. 144, Bannack Stat.; re-en. Sec. 284, p. 193, L. 1867; re-en. Sec. 333, p. 100, Cod. Stat. 1871; re-en. Sec. 384, p. 145, L. 1877; re-en. Sec. 384, 1st Div. Rev. Stat. 1879; re-en. Sec. 397, 1st Div. Comp. Stat. 1887; re-en. Sec. 1367, C. Civ. Proc. 1895; re-en. Sec. 6910, Rev. C. 1907; re-en. Sec. 9543, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 772; re-en. Sec. 9543, R.C.M. 1935; R.C.M. 1947, 93-6328.

70-29-323. Disposition of proceeds generally. The proceeds of sale and the securities taken by the referees or any part thereof must be distributed by them to the persons entitled thereto whenever the court so directs. But in case no direction be given, all of such proceeds and securities must be paid into the court or deposited therein or as directed by the court.

History: En. Sec. 513, p. 144, Bannack Stat.; re-en. Sec. 285, p. 194, L. 1867; re-en. Sec. 334, p. 101, Cod. Stat. 1871; re-en. Sec. 385, p. 145, L. 1877; re-en. Sec. 385, 1st Div. Rev. Stat. 1879; re-en. Sec. 398, 1st Div. Comp. Stat. 1887; re-en. Sec. 1368, C. Civ. Proc. 1895; re-en. Sec. 6911, Rev. C. 1907; re-en. Sec. 9544, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 773; re-en. Sec. 9544, R.C.M. 1935; R.C.M. 1947, 93-6329.

70-29-324. Continuation of action when proceeds paid into court. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action and who are known are paid into the court, the action may continue as between such parties for the determination of their respective claims thereto which must be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings, as in an original action.

History: En. Sec. 514, p. 144, Bannack Stat.; re-en. Sec. 286, p. 194, L. 1867; re-en. Sec. 335, p. 101, Cod. Stat. 1871; re-en. Sec. 386, p. 145, L. 1877; re-en. Sec. 386, 1st Div. Rev. Stat. 1879; re-en. Sec. 399, 1st Div. Comp. Stat. 1887; re-en. Sec. 1369, C. Civ. Proc. 1895; re-en. Sec. 6912, Rev. C. 1907; re-en. Sec. 9545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 774; re-en. Sec. 9545, R.C.M. 1935; R.C.M. 1947, 93-6330.

70-29-325. Future interests — ascertainment — share of proceeds. In all cases of sales when it appears that any person has a vested or contingent or future right or estate in any of the property sold, the court must ascertain and settle the proportional value of such contingent or vested right or estate and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

History: En. Sec. 521, p. 146, Bannack Stat.; re-en. Sec. 293, p. 195, L. 1867; re-en. Sec. 342, p. 102, Cod. Stat. 1871; re-en. Sec. 393, p. 147, L. 1877; re-en. Sec. 393, 1st Div. Rev. Stat. 1879; re-en. Sec. 406, 1st Div. Comp. Stat. 1887; re-en. Sec. 1376, C. Civ. Proc. 1895; re-en. Sec. 6919, Rev. C. 1907; re-en. Sec. 9552, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 781; re-en. Sec. 9552, R.C.M. 1935; R.C.M. 1947, 93-6337.

70-29-326. Tenant for life or years — compensation upon sale. (1) The person entitled to a tenancy for life or years or who has a right or inchoate right of dower and whose estate has been sold is entitled to receive a sum that may be considered a reasonable satisfaction for the estate and that the person entitled may consent to accept instead of the right by an instrument in writing filed with the clerk of the court. Upon the filing of the consent, the clerk shall enter the consent in the minutes of the court.

(2) If the consent is not given, filed, and entered, as provided in subsection (1), at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of the estate and shall order the sum to be paid to the party or deposited in court for the party, as the case may require.

(3) If the persons entitled to the estate for life or years are unknown, the court shall provide for the protection of their rights in the same manner as if they were known and had appeared.

History: (1)En. Sec. 518, p. 145, Bannack Stat.; re-en. Sec. 290, p. 194, L. 1867; re-en. Sec. 339, p. 101, Cod. Stat. 1871; re-en. Sec. 390, p. 146, L. 1877; re-en. Sec. 390, 1st Div. Rev. Stat. 1879; re-en. Sec. 403, 1st Div. Comp. Stat. 1887; re-en. Sec. 1373, C. Civ. Proc. 1895; re-en. Sec. 6916, Rev. C. 1907; re-en. Sec. 9549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 778; re-en. Sec. 9549, R.C.M. 1935; Sec. 93-6334, R.C.M. 1947; (2)En. Sec. 519, p. 145, Bannack Stat.; re-en. Sec. 291, p. 195, L. 1867; re-en. Sec. 340, p. 102, Cod. Stat. 1871; re-en. Sec. 391, p. 146, L. 1877; re-en. Sec. 391, 1st Div. Rev. Stat. 1879; re-en. Sec. 404, 1st Div. Comp. Stat. 1887; re-en. Sec. 1374, C. Civ. Proc. 1895; re-en. Sec. 6917, Rev. C. 1907; re-en. Sec. 9550, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 779; re-en. Sec. 9550, R.C.M. 1935; Sec. 93-6335, R.C.M. 1947; (3)En. Sec. 520, p. 146, Bannack Stat.; re-en. Sec. 292, p. 195, L. 1867; re-en. Sec. 341, p. 102, Cod. Stat. 1871; re-en. Sec. 392, p. 147, L. 1877; re-en. Sec. 392, 1st Div. Rev. Stat. 1879; re-en. Sec. 405, 1st Div. Comp. Stat. 1887; re-en. Sec. 1375, C. Civ. Proc. 1895; re-en. Sec. 6918, Rev. C. 1907; re-en. Sec. 9551, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 780; re-en. Sec. 9551, R.C.M. 1935; Sec. 93-6336, R.C.M. 1947; R.C.M. 1947, 93-6334, 93-6335, 93-6336; amd. Sec. 2228, Ch. 56, L. 2009.

70-29-327. Minor's share of proceeds — payment to guardian. When the share of a minor is sold, the proceeds of the sale may be paid by the referee making the sale to the minor's general guardian or the special guardian appointed for the minor in the action upon giving the security required by law or directed by order of the court.

History: En. Sec. 533, p. 148, Bannack Stat.; re-en. Sec. 305, p. 196, L. 1867; re-en. Sec. 354, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1388, C. Civ. Proc. 1895; re-en. Sec. 6931, Rev. C. 1907; re-en. Sec. 9564, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 793; re-en. Sec. 9564, R.C.M. 1935; R.C.M. 1947, 93-6349; amd. Sec. 10, Ch. 2, L. 1983; amd. Sec. 2229, Ch. 56, L. 2009.

Cross-References

Appointment of guardian ad litem, 25-5-301.

70-29-328. Incompetent's share of proceeds — payment to guardian. The guardian who may be entitled to the custody and management of the estate of a person committed pursuant to 53-21-127 or other person adjudged incapable of conducting the person's own affairs, whose interest in real property has been sold, may receive on behalf of the person the person's share of the proceeds of the real property from the referees. The guardian may receive the interest on executing an undertaking with a surety. The undertaking must be approved by a judge of the court and must state that the guardian will faithfully discharge the trust placed in the guardian and will make an accurate account to the person entitled to the accounting or to the person's legal representative.

History: En. Sec. 534, p. 148, Bannack Stat.; re-en. Sec. 306, p. 196, L. 1867; re-en. Sec. 355, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1389, C. Civ. Proc. 1895; re-en. Sec. 6932, Rev. C. 1907; re-en. Sec. 9565, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 794; re-en. Sec. 9565, R.C.M. 1935; R.C.M. 1947, 93-6350; amd. Sec. 25, Ch. 115, L. 1979; amd. Sec. 38, Ch. 490, L. 1997.

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-29-329. Proceeds of sale belonging to persons unknown or out-of-state — how invested. Where there are proceeds of a sale belonging to an unknown owner or to a person without the state who has no legal representative within it, the same must be invested in bonds of this state or the United States for the benefit of the persons entitled thereto.

History: En. Sec. 528, p. 146, Bannack Stat.; re-en. Sec. 300, p. 195, L. 1867; re-en. Sec. 349, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1383, C. Civ. Proc. 1895; re-en. Sec. 6926, Rev. C. 1907; re-en. Sec. 9559, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 788; re-en. Sec. 9559, R.C.M. 1935; R.C.M. 1947, 93-6344.

70-29-330. Duty of clerk as to security and investments. The clerk of court in whose name a security is taken or by whom an investment is made and the clerk's successors in office:

(1) must receive the interest and principal as it becomes due and shall apply and invest the interest and principal as the court may direct;

(2) shall deposit with the county treasurer all securities taken; and

(3) shall keep an account of investments and money received and the disposition of the investments and money in a book provided and kept for that purpose in the clerk's office that is free for inspection by all persons.

History: En. Sec. 531, p. 147, Bannack Stat.; re-en. Sec. 303, p. 196, L. 1867; re-en. Sec. 352, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1386, C. Civ. Proc. 1895; re-en. Sec. 6929, Rev. C. 1907; re-en. Sec. 9562, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 791; re-en. Sec. 9562, R.C.M. 1935; R.C.M. 1947, 93-6347; amd. Sec. 2230, Ch. 56, L. 2009.

Part 4
Uniform Partition of Heirs Property Act

70-29-401. Short title. This part may be cited as the "Uniform Partition of Heirs Property Act".

History: En. Sec. 1, Ch. 263, L. 2013.

70-29-402. Definitions. As used in this part, the following definitions apply:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heirs property under 70-29-410 or 70-29-414 or adopting the valuation of the property agreed to by all cotenants.

(5) "Heirs property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

(a) there is no agreement in a record binding all the cotenants that governs the partition of the property;

(b) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(c) any of the following applies:
(i) 20% or more of the interests are held by cotenants who are relatives;
(ii) 20% or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
(iii) 20% or more of the cotenants are relatives.

(6) "Partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under 70-29-414.

(7) "Partition in kind" means the division of heirs property into physically distinct and separately titled parcels.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this part.

History: **En. Sec. 2, Ch. 263, L. 2013.**

70-29-403. Applicability — relation to other laws. (1) This part applies to partition actions filed on or after October 1, 2013.

(2) In an action to partition real property under Title 70, chapter 29, parts 1 through 3, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this part unless all of the cotenants otherwise agree in a record.

(3) This part supplements Title 70, chapter 29, parts 1 through 3, and, if an action is governed by this part, replaces provisions of Title 70, chapter 29, parts 1 through 3, that are inconsistent with this part.

History: **En. Sec. 3, Ch. 263, L. 2013.**

70-29-404. Service — notice by posting. (1) This part does not limit or affect the method by which service of a complaint in a partition action may be made.

(2) If the plaintiff in a partition action seeks notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

History: **En. Sec. 4, Ch. 263, L. 2013.**

70-29-405. Referees. If the court appoints referees pursuant to 70-29-202, each referee, in addition to the requirements and disqualifications applicable to referees in Title 70, chapter 29, part 2, must be disinterested and impartial and not a party to or a participant in the action.

History: **En. Sec. 5, Ch. 263, L. 2013.**

70-29-406 through 70-29-409 reserved.

70-29-410. Determination of value. (1) Except as otherwise provided in subsections (2) and (3), if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (4).

(2) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(3) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(4) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(5) If an appraisal is conducted pursuant to subsection (4), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address stating:

(a) the appraised fair market value of the property;

(b) that the appraisal is available at the clerk's office; and

(c) that a party may file with the court an objection to the appraisal, not later than 30 days after the notice is sent, stating the grounds for the objection.

(6) If an appraisal is filed with the court pursuant to subsection (4), the court shall conduct a hearing to determine the fair market value of the property not sooner than 30 days after a copy of the notice of the appraisal is sent to each party under subsection (5), whether or not an objection to the appraisal is filed under subsection (5)(c). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(7) After a hearing under subsection (6), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

History: En. Sec. 6, Ch. 263, L. 2013.

70-29-411. Buyout by cotenant. (1) If any cotenant requested partition by sale, after the determination of value under 70-29-410, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(2) Not later than 45 days after the notice is sent under subsection (1), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(3) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under 70-29-410 multiplied by the cotenant's fractional ownership of the entire parcel.

(4) After expiration of the period in subsection (2), the following rules apply:

(a) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(b) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(c) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under 70-29-412(1) and (2).

(5) If the court sends notice to the parties under subsection (4)(a) or (4)(b), the court shall set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants shall pay their apportioned price into the court. After this date, the following rules apply:

(a) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(b) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under 70-29-412(1) and (2) as if the interests of the cotenants that requested partition by sale were not purchased.

(c) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(6) Not later than 20 days after the court gives notice pursuant to subsection (5)(c), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

(a) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(b) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under 70-29-412(1) and (2) as if the interests of the cotenants that requested partition by sale were not purchased.

(c) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

(7) Not later than 45 days after the court sends notice to the parties pursuant to subsection (1), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(8) If the court receives a timely request under subsection (7), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(a) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (1) through (6) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(b) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under 70-29-410.

History: **En. Sec. 7, Ch. 263, L. 2013.**

70-29-412. Partition alternatives. (1) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to 70-29-411 or if after conclusion of the buyout under 70-29-411 a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in 70-29-413, finds that partition in kind will result in great prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(2) If the court does not order partition in kind under subsection (1), the court shall order partition by sale pursuant to 70-29-414 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(3) If the court orders partition in kind pursuant to subsection (1), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(4) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to 70-29-411, a part of the property representing the combined interests of these cotenants as determined by the court and this part of the property must remain undivided.

History: **En. Sec. 8, Ch. 263, L. 2013.**

70-29-413. Partition in kind — considerations. (1) In determining under 70-29-412(1) whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following:

(a) whether the heirs property practicably can be divided among the cotenants;

(b) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(c) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(d) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(e) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(f) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(g) any other relevant factor.

(2) The court may not consider any one factor in subsection (1) to be dispositive without weighing the totality of all relevant factors and circumstances.

History: **En. Sec. 9, Ch. 263, L. 2013.**

70-29-414. Open market sale — sealed bids — auction. (1) If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(2) If the court orders an open-market sale and the parties, not later than 10 days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(3) If the broker appointed under subsection (2) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(a) the broker shall comply with the reporting requirements in 70-29-415; and

(b) the sale may be completed in accordance with state law other than this part.

(4) If the broker appointed under subsection (2) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(a) approve the highest outstanding offer, if any;

(b) redetermine the value of the property and order that the property continue to be offered for an additional time; or

(c) order that the property be sold by sealed bids or at an auction.

(5) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under 70-29-301.

(6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

History: **En. Sec. 10, Ch. 263, L. 2013.**

70-29-415. Report of open-market sale. (1) Unless required to do so within a shorter time by any other law of this state, a broker appointed under 70-29-412(2) to offer heirs property for open-market sale shall file a report with the court not later than 7 days after receiving an offer to purchase the property for at least the value determined under 70-29-410 or 70-29-414.

(2) The report required by subsection (1) must contain the following information:

(a) a description of the property to be sold to each buyer;

(b) the name of each buyer;

(c) the proposed purchase price;

(d) the terms and conditions of the proposed sale, including the terms of any owner financing;

(e) the amounts to be paid to lienholders;

(f) a statement of contractual or other arrangements or conditions of the broker's commission; and

(g) other material facts relevant to the sale.

History: **En. Sec. 11, Ch. 263, L. 2013.**

70-29-416 through 70-29-418 reserved.

70-29-419. Uniformity of application and construction. In applying and construing this part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: En. Sec. 12, Ch. 263, L. 2013.

70-29-420. Relation to Electronic Signatures in Global and National Commerce Act. This part modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: En. Sec. 13, Ch. 263, L. 2013.

CHAPTER 30
EMINENT DOMAIN

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Chapter Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.
Private Property Assessment Act, Title 2, ch. 10, part 1.
Local government subject to Title 70, ch. 30, 7-1-114.
City or Town Council — power of condemnation, 7-5-4106.
County Commissioners — acquisition of right-of-way, 7-14-2107.
Acquisition of land for public ferries and wharves, 7-14-2804, 7-14-2829.

Municipal housing authority — exercise of power of eminent domain, 7-15-4462.
Cemetery association's power of eminent domain, 35-20-104.
Prohibited transactions with foreign adversaries, 35-30-103.
Department of Transportation — exercise of right of eminent domain, 60-4-104.
State airports — acquisition and operation, 67-2-301, 67-2-302.
Municipal airports — acquisition when zoning not sufficient, 67-10-102.
Pipeline carriers — use of power of eminent domain, 69-13-104.
Eminent domain — authorized, 70-1-205.
Mining — right-of-way and eminent domain, Title 82, ch. 2, part 2.
Eminent domain for open-pit mining — purchase of property required, 82-2-221.
Eminent domain — underground storage of natural gas, Title 82, ch. 10, part 3.

Part 1
General and Substantive Provisions

70-30-101. Eminent domain defined. Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

History: En. Sec. 579, p. 189, L. 1877; re-en. Sec. 579, 1st Div. Rev. Stat. 1879; re-en. Sec. 597, 1st Div. Comp. Stat. 1887; amd. Sec. 2210, C. Civ. Proc. 1895; re-en. Sec. 7330, Rev. C. 1907; re-en. Sec. 9933, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1237; re-en. Sec. 9933, R.C.M. 1935; R.C.M. 1947, 93-9901.

70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(d), (2)(g), or (2)(h), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(15) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

(16) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(17) public assistance purposes as provided in 53-2-201;

(18) highway purposes as provided in 60-4-103 and 60-4-104;

(19) common carrier pipelines as provided in 69-13-104;

(20) water supply, water transportation, and water treatment systems as provided in 75-6-313;

(21) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(22) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(23) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(24) water conservation and flood control projects as provided in 76-5-1108;

(25) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(26) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(27) conservancy district purposes as provided in 85-9-410;

(28) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(29) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(30) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(31) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(32) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(33) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(34) private roads leading from highways to residences or farms;

(35) telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;

(36) telegraph lines;

(37) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(38) tramway lines;

(39) logging railways;

(40) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(41) underground reservoirs suitable for storage of natural gas;

(42) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(43) projects to restore and reclaim lands that were strip-mined or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1238; re-en. Sec. 9934, R.C.M. 1935; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973; amd. Sec. 1, Ch. 375, L. 1974; R.C.M. 1947, 93-9902; amd. Sec. 18, Ch. 550, L. 1979; amd. Sec. 52, Ch. 125, L. 2001; amd. Sec. 4, Ch. 451, L. 2003; amd. Sec. 28, Ch. 300, L. 2005; amd. Sec. 1, Ch. 193, L. 2007; amd. Sec. 2, Ch. 512, L. 2007; amd. Sec. 38, Ch. 286, L. 2009; amd. Sec. 3, Ch. 238, L. 2023; amd. Sec. 5, Ch. 55, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 55, L. 2025. Amendment effective April 3, 2025.

Applicability: Section 7, Ch. 55, L. 2025, provided: "[This act] applies to a municipal resolution making a finding of the existence of a blighted area adopted after [the effective date of this act]." Effective April 3, 2025.

Cross-References

City or Town Council — water supply and regulation, Title 7, ch. 13, part 44.
Acquisition of land for ferry, 7-14-2829.
Municipal housing authority — exercise of power of eminent domain, 7-15-4462.
Municipal airports, Title 67, ch. 10.
Property for waterworks — public use, 85-1-209.
Conduction of water as public use, 85-2-414.
Use of water for irrigation as public use, 85-7-1931.

70-30-103. What property may be taken. (1) The property that may be taken under this chapter includes:

(a) all real property belonging to any person;

(b) land that belongs to this state or to any county, city, or town and that is not appropriated to some public use;

(c) property appropriated to a public use, but the property may not be taken unless for a more necessary public use than that to which it has already been appropriated;

(d) franchises for roads, bridges, and ferries and all other franchises; but the franchises may not be taken unless for free highways, free bridges, railroads, or another more necessary public use; or

(e) a right-of-way for any public use mentioned in 70-30-102 and any structures and improvements on the right-of-way. The land held and used in connection with the right-of-way must be subject to being connected with, crossed, or intersected by any other right-of-way improvements or structures on the right-of-way. The improvements or structures must also be subject to a limited use in common with the owner of the improvements or structures when necessary. However, the uses, crossings, intersections, and connections must be made in the manner that is most compatible with the greatest public benefit and least private injury.

(2) All classes of private property not enumerated may be taken for public use when the taking is authorized by law.

History: En. Sec. 582, p. 190, L. 1877; re-en. Sec. 582, 1st Div. Rev. Stat. 1879; re-en. Sec. 600, 1st Div. Comp. Stat. 1887; amd. Sec. 2213, C. Civ. Proc. 1895; re-en. Sec. 7333, Rev. C. 1907; re-en. Sec. 9936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1240; re-en. Sec. 9936, R.C.M. 1935; R.C.M. 1947, 93-9904; amd. Sec. 53, Ch. 125, L. 2001.

70-30-104. What estates and rights in land may be taken. (1) The following is a classification of the estates and rights in land subject to taking for public use:

(a) subject to subsection (2), estates or rights that are necessary, up to and including a fee simple interest, when taken for:

(i) public buildings or grounds;

(ii) permanent buildings;

(iii) an outlet for a flow or a place for the deposit of debris or tailings of a mine;

(iv) the mining and extracting of ores, metals, or minerals when the ores, metals, or minerals are owned by the condemnor but are located beneath or upon the surface of property for which the title to the surface vests in others; or

(v) the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the taking is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir taken must be determinable and for all purposes terminates upon abandonment or upon cessation for the period of 1 year of the use for which the property was taken. Upon the abandonment or cessation, the ownership of the residue of natural gas remaining in the reservoir vests in the current owners of the surface property over the reservoir space.

(b) the estate or rights in the surface property that are necessary for a reservoir or dam and for the permanent flooding that results from the reservoir or dam, up to the edge of the maximum pool of the reservoir;

(c) an easement, leasehold, or other interest, for as long as the interest is necessary for the purpose described in the complaint, or fee simple interest when taken for any other use;

(d) the right of entry upon and occupation of land and the right to take from the land any earth, gravel, stones, trees, and timber that may be necessary for some public use.

(2) Subject to 60-4-102, an easement is presumed to be sufficient for a project for a public use unless the parties agree that a greater interest should be taken or the condemnor shows by a preponderance of the evidence that a greater interest is necessary.

History: En. Sec. 581, p. 190, L. 1877; re-en. Sec. 581, 1st Div. Rev. Stat. 1879; re-en. Sec. 599, 1st Div. Comp. Stat. 1887; re-en. Sec. 2212, C. Civ. Proc. 1895; re-en. Sec. 7332, Rev. C. 1907; re-en. Sec. 9935, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1239; re-en. Sec. 9935, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1943; amd. Sec. 2, Ch. 245, L. 1953; amd. Sec. 7, Ch. 259, L. 1955; amd. Sec. 2, Ch. 216, L. 1961; R.C.M. 1947, 93-9903; amd. Sec. 1, Ch. 97, L. 1979; amd. Sec. 1, Ch. 622, L. 1983; amd. Sec. 2, Ch. 19, L. 2001; amd. Sec. 54, Ch. 125, L. 2001.

70-30-105. *(Temporary)* **Taking of underground natural gas storage reservoir — effect on owner's right to drill.** (1) The taking of any sand, stratum, or formation for use as an underground natural gas storage reservoir is without prejudice to the rights of the owner or owners of the land or of the oil, gas, or other mineral rights in the land to drill or bore through the sand, stratum, or formation taken for use as an underground natural gas storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in the land above or below the sand, stratum, or formation taken.

(2) Any additional cost or expense required to be incurred in order to protect the underground natural gas storage reservoir against pollution and the escape of the gas from the reservoir by reason of boring or drilling through the sand, stratum, or formation used as an underground natural gas storage reservoir must be paid by the persons, firm, or corporation owning the underground natural gas storage reservoir at the time of the boring or drilling.

70-30-105. *(Effective on occurrence of contingency)* **Taking of underground natural gas storage reservoir — effect on owner's right to drill.** (1) The taking of any sand, stratum, or formation for use as an underground natural gas storage reservoir is without prejudice to the rights of the owner or owners of the land or of the oil, gas, or other mineral rights in the land to drill or bore through the sand, stratum, or formation taken for use as an underground natural gas storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in the land above or below the sand, stratum, or formation taken.

(2) Any additional cost or expense required to be incurred in order to protect the underground natural gas storage reservoir against pollution and the escape of the gas from the reservoir by reason of boring or drilling through the sand, stratum, or formation used as an underground natural gas storage reservoir must be paid by the persons, firm, or corporation owning the underground natural gas storage reservoir at the time of the boring or drilling.

(3) After the effective date of this section, if the sand, stratum, or formation is used as a geologic storage reservoir as defined in 82-11-101, it may not be taken for use as an underground natural gas storage reservoir.

History: En. Sec. 5, Ch. 245, L. 1953; R.C.M. 1947, 93-9903.1; amd. Sec. 55, Ch. 125, L. 2001; amd. Sec. 7, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

70-30-106. Eminent domain not to be used for coal mining in certain cases — policy. (1) For the reasons contained in this section, the state's power of eminent domain may not be exercised to mine and extract coal owned by the condemnor located beneath the surface of property for which the title to the surface is vested in others.

(2) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects large areas of land and large numbers of people.

(3) In certain areas of Montana referred to in subsection (2), the title to the surface property is vested in an owner other than the mineral owner and the surface owner is putting that surface property to a productive use, and it is the public policy of the state to encourage and foster that productive use by the surface owner. To permit the mineral owner to condemn the surface owner's property is to deprive the surface owner of the right to use the property in the

productive manner that the surface owner determines and is also contrary to public policy set forth in subsection (5).

(4) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain.

(5) It is the public policy of the state to encourage and foster diversity of land ownership, and the surface mining of coal and control of large areas of land by the surface coal mining industry would not promote public policy and further the public interest.

History: En. 93-9902.1 by Sec. 2, Ch. 311, L. 1973; R.C.M. 1947, 93-9902.1; amd. Sec. 56, Ch. 125, L. 2001.

70-30-107. Private roads. Private roads may be opened in the manner prescribed by this chapter, but in every case the necessity of the road and the amount of all damage to be sustained by the opening of the road must be first determined by a jury, and the amount of damages, together with the expenses of the proceeding, must be paid by the person to be benefited.

History: En. Sec. 2232, C. Civ. Proc. 1895; re-en. Sec. 7352, Rev. C. 1907; re-en. Sec. 9955, R.C.M. 1921; re-en. Sec. 9955, R.C.M. 1935; R.C.M. 1947, 93-9923; amd. Sec. 57, Ch. 125, L. 2001.

70-30-108. No abrogation of provisions relating to city or county roads. This chapter may not be construed to abrogate or repeal any statute providing for the taking of property in any county, city, or town for road or street purposes.

History: En. Sec. 2233, C. Civ. Proc. 1895; re-en. Sec. 7353, Rev. C. 1907; re-en. Sec. 9956, R.C.M. 1921; re-en. Sec. 9956, R.C.M. 1935; R.C.M. 1947, 93-9924; amd. Sec. 58, Ch. 125, L. 2001.

70-30-109. Temporary logging roads and banking grounds. (1) In the event that a temporary road used for logging purposes or land used for banking grounds is taken, the taking includes only the temporary right to use the road or land. The order of condemnation for the road or land must fix the length of time and the date from which the road must be opened or land must be used, and at the expiration of that period, the right to use the road or land ceases. The use of the road or land reverts to the party from whom the road or land was taken or to that party's legal successor in interest. However, land may not be taken for temporary logging roads or banking grounds for a period of time longer than 5 years. When taken for a period of time exceeding 1 year, the amount of damage for each year must be fixed separately, and the amount fixed for each particular year must be paid on or before January 1 of each year. If the amount fixed for any 1 year is not paid as specified in this subsection, then the use of the road or land reverts to the party from whom the road or land was taken or to that party's successor in interest.

(2) In any suit for the opening of any temporary logging road or for the use of any land for banking grounds, the court may not finally order the opening of the road or the right to use the land until the amount assessed as damages has been paid into court for the benefit of the party or parties owning or holding the road or land.

(3) In the event that any road or land taken or used as provided in this section is occupied by a lessee, the lessee must be made a party to the suit, and the final decree of the court must apportion the amount of compensation received between the lessee and the owner of the road or land. The decree is subject to the right of appeal by any party in interest.

History: En. Sec. 1, Ch. 89, L. 1907; re-en. Secs. 7354, 7355, Rev. C. 1907; re-en. Secs. 9957, 9958, R.C.M. 1921; re-en. Secs. 9957, 9958, R.C.M. 1935; R.C.M. 1947, 93-9925, 93-9926; amd. Sec. 59, Ch. 125, L. 2001.

70-30-110. Survey and location of property to be taken — greatest public good — least private injury. (1) In all cases in which land is required for public use, the state or its agents in charge of the public use may survey and locate the land to be used. The use must be located in the manner that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish written notice to the listed persons.

(2) Prior to or at the time of rejection of the final written offer as referred to in 70-30-111(1)(d), the condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the condemnee considers necessary to minimize damages to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel of property.

History: En. Sec. 584, p. 191, L. 1877; re-en. Sec. 584, 1st Div. Rev. Stat. 1879; re-en. Sec. 602, 1st Div. Comp. Stat. 1887; re-en. Sec. 2215, C. Civ. Proc. 1895; re-en. Sec. 7335, Rev. C. 1907; re-en. Sec. 9938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1242; re-en. Sec. 9938, R.C.M. 1935; R.C.M. 1947, 93-9906; amd. Sec. 1, Ch. 666, L. 1985; amd. Sec. 1, Ch. 20, L. 2001; amd. Sec. 60, Ch. 125, L. 2001; amd. Sec. 1, Ch. 371, L. 2013.

70-30-111. Facts necessary to be found before condemnation. (1) Before property can be taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

(a) the use to which the property is to be applied is a public use pursuant to 70-30-102;

(b) the taking is necessary to the public use;

(c) if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use;

(d) an effort to obtain the property interest sought to be taken was made by submission of a final written offer prior to initiating condemnation proceedings and the final written offer was rejected.

(2) Subsection (1)(d) does not prohibit the condemnor from making further offers in an effort to obtain the property interest sought to be taken, but offers made after the final written offer is submitted pursuant to subsection (1)(d) may not be used to determine whether the condemnee prevails pursuant to 70-30-305. The condemnor shall disclose to a property owner that further offers made in accordance with this subsection (2) are not considered the final written offer.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1241; re-en. Sec. 9937, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-9905(part); amd. Sec. 2, Ch. 622, L. 1983; amd. Sec. 61, Ch. 125, L. 2001; amd. Sec. 3, Ch. 512, L. 2007; amd. Sec. 2, Ch. 371, L. 2013.

70-30-112. Eminent domain not to be used for certain recreational purposes. The right of eminent domain may not be exercised for:

(1) trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses whose primary purpose is a foot path, equestrian trail, bicycle path, or walkway; or

(2) a public park whose primary purpose is:

(a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use.

History: En. Sec. 1, Ch. 238, L. 2023.

Part 2
Preliminary Procedure

70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence, are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

History: En. Sec. 2231, C. Civ. Proc. 1895; re-en. Sec. 7351, Rev. C. 1907; re-en. Sec. 9954, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1256; re-en. Sec. 9954, R.C.M. 1935; R.C.M. 1947, 93-9922; amd. Sec. 26, Ch. 115, L. 1979; amd. Sec. 3, Ch. 622, L. 1983.

70-30-202. Jurisdiction and venue — complaint and summons required. All proceedings under this chapter must be brought in the district court of the county in which the property or some part of the property is situated. A proceeding must be commenced by filing a complaint and issuing a summons. A summons served under this chapter must contain a notice to the condemnee to file and serve an answer. Within 6 months from the date that the summons is served, unless the court shortens or lengthens that time for good cause, the court, sitting without a jury, shall commence a trial on the issue of whether a preliminary condemnation order should be issued.

History: **En. Sec. 585, p. 191, L. 1877; re-en. Sec. 585, 1st Div. Rev. Stat. 1879; re-en. Sec. 603, 1st Div. Comp. Stat. 1887; re-en. Sec. 2216, C. Civ. Proc. 1895; re-en. Sec. 7336, Rev. C. 1907; re-en. Sec. 9939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1243; re-en. Sec. 9939, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1937; R.C.M. 1947, 93-9907; amd. Sec. 4, Ch. 622, L. 1983; amd. Sec. 62, Ch. 125, L. 2001.**

70-30-203. Contents of complaint. (1) The complaint for condemnation must contain:

(a) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought to be taken, who is the plaintiff;

(b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of record of the property sought to be taken, if known, or a statement that they are unknown, who are the defendants;

(c) a statement of the right of the plaintiff to take the property for public use;

(d) statements of each of the facts necessary to be found in 70-30-111(1);

(e) a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property. The condemnor's claim of appropriate payment for damages must be the same amount as the final written offer that was rejected pursuant to the facts necessary in 70-30-111(1)(d).

(2) In addition to the items listed in subsection (1), a copy of the current publication produced by the environmental quality council entitled "Eminent Domain In Montana" must be attached to the complaint as an exhibit.

(3) If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show the location, general route, and termini and must be accompanied with a map of the route, so far as the route is involved in the action or proceeding.

(4) (a) If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be taken, in addition to the items listed in subsection (1), the complaint must include a description of the reservoir and of the land in which the reservoir is alleged to be contained and a description of all other property and rights sought to be taken for use in connection with the right to store natural gas in and withdraw natural gas from the reservoir.

(b) In addition, the complaint must state facts showing that:

(i) the reservoir is subject to being taken by the plaintiff;

(ii) the underground storage of natural gas in the land sought to be taken is in the public interest;

(iii) the reservoir is suitable and practicable for natural gas storage;

(iv) the plaintiff in good faith has been unable to acquire the rights sought to be taken; and

(v) the rights and property sought to be taken are not prohibited by law from being taken.

(c) The complaint must be accompanied by a certificate from the board of oil and gas conservation as provided in 82-10-304.

History: **En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1244; re-en. Sec. 9940, R.C.M. 1935; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955; amd. Sec. 1, Ch. 197, L. 1973; amd. Sec. 206, Ch. 253, L. 1974; R.C.M. 1947, 93-9908; amd. Sec. 20, Ch. 526, L. 1983; amd. Sec. 5, Ch. 622, L. 1983; amd. Sec. 2, Ch. 666, L. 1985; amd. Sec. 2, Ch. 20, L. 2001; amd. Sec. 63, Ch. 125, L. 2001; amd. Sec. 1, Ch. 103, L. 2013; amd. Sec. 3, Ch. 371, L. 2013.**

70-30-204. Repealed. Sec. 12, Ch. 622, L. 1983.

History: **En. Sec. 587, p. 192, L. 1877; re-en. Sec. 587, 1st Div. Rev. Stat. 1879; re-en. Sec. 605, 1st Div. Comp. Stat. 1887; amd. Sec. 2218, C. Civ. Proc. 1895; re-en. Sec. 7338, Rev. C. 1907; re-en. Sec. 9941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1245; re-en. Sec. 9941, R.C.M. 1935; amd. Sec. 9, Ch. 259, L. 1955; amd. Sec. 1, Ch. 234, L. 1961; R.C.M. 1947, 93-9909.**

70-30-205. Repealed. Sec. 12, Ch. 622, L. 1983.

History: **En. Sec. 588, p. 192, L. 1877; re-en. Sec. 588, 1st Div. Rev. Stat. 1879; re-en. Sec. 606, 1st Div. Comp. Stat. 1887; amd. Sec. 2219, C. Civ. Proc. 1895; re-en. Sec. 7339, Rev. C. 1907; re-en. Sec. 9942, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1246; re-en. Sec. 9942, R.C.M. 1935; amd. Sec. 2, Ch. 234, L. 1961; R.C.M. 1947, 93-9910.**

70-30-206. Powers of court — preliminary condemnation order. (1) In a condemnation proceeding, the court may:

(a) regulate and determine the place and manner of:

(i) making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e); and

(ii) occupying canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) subject to 70-30-104(2), limit the interest in real property sought to be taken if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of an interest in real property and that the condemnor has met the burden of proof under 70-30-111(1), the court shall enter a preliminary condemnation order providing that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) (a) If the property sought to be taken is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of the property for that use has been proved by the condemnor based upon substantial evidence, the order of the court must direct the condemnation commissioners to determine the amount to be paid by the condemnor to each person for each person's interest in the property sought to be taken for use as an underground natural gas storage reservoir.

(b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the commissioners to determine the annual rental for:

(i) the use of the underground natural gas storage reservoir;

(ii) the use of so much of the surface as is required in the operation of the reservoir and for the use in connection with the creation, operation, and maintenance of the reservoir; and

(iii) all the native gas contained in the reservoir. However, the amount to be paid for the native gas may not be less than the market value of the gas.

(4) The court shall appoint three persons, qualified and recommended as experts by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by the condemnor to each person for each person's interest in the property sought to be taken. The fees and expenses of the experts are chargeable as costs of the proceedings to be paid by the condemnor.

(5) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court shall give the proceedings expeditious and priority consideration. The preliminary condemnation proceeding must be tried by the court sitting without a jury.

History: En. Sec. 589, p. 193, L. 1877; re-en. Sec. 589, 1st Div. Rev. Stat. 1879; re-en. Sec. 607, 1st Div. Comp. Stat. 1887; amd. Sec. 2220, C. Civ. Proc. 1895; re-en. Sec. 7340, Rev. C. 1907; re-en. Sec. 9943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1247; re-en. Sec. 9943, R.C.M. 1935; amd. Sec. 4, Ch. 245, L. 1953; amd. Sec. 10, Ch. 259, L. 1955; amd. Sec. 3, Ch. 234, L. 1961; amd. Sec. 207, Ch. 253, L. 1974; R.C.M. 1947, 93-9911; amd. Sec. 6, Ch. 622, L. 1983; amd. Sec. 3, Ch. 19, L. 2001; amd. Sec. 64, Ch. 125, L. 2001; amd. Sec. 4, Ch. 371, L. 2013.

70-30-207. Appointment of condemnation commissioners — affidavit — compensation. (1) Within 30 days of entry of a preliminary condemnation order, the condemnee shall file a statement of the condemnee's claim of just compensation. If within 20 days of service of the condemnee's claim the condemnor fails to accept the claim, the court shall appoint condemnation commissioners. The commission hearing may be waived by written consent of both parties, in which case the proceeding must be conducted in the district court as if the case had been appealed from an award by the commissioners.

(2) The court shall appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of the commissioners must be nominated by the condemnor. One of the commissioners must be nominated by the condemnee. The third commissioner is the presiding officer and must be nominated by the two commissioners previously nominated. However, if the two commissioners fail to make the choice at the time of their appointment, then the nomination must be made by the presiding judge.

(3) Each commissioner:
(a) must have sufficient knowledge of the English language;
(b) must be a resident of a county within the judicial district in which the action is pending;
(c) may not be related within the sixth degree of consanguinity to any party; and
(d) may not stand in the relation of guardian and ward, master and servant, debtor and creditor, principal and agent, or partner or surety to any party.

(4) At the time of the meeting and nominations, there must be filed with the court by each nominating party or judge an affidavit of the person nominated stating substantially the following:

(a) that the person has not formed an unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the condemnor's offer for the lands and improvements of the condemnee;

(b) that the person has no enmity against or bias in favor of any party and has not discussed, communicated, overheard, or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, the person is willing to serve and will try the issues of compensation and render a decision according to the evidence and in compliance with the instructions of the court; and

(d) that the person will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

(5) The court shall specify the compensation of the condemnation commissioners, which may not exceed $250 for each hearing day, including expenses. The condemnor shall pay the compensation of the commissioners.

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 8, L. 1979; amd. Sec. 1, Ch. 122, L. 1983; amd. Sec. 7, Ch. 622, L. 1983; amd. Sec. 3, Ch. 666, L. 1985; amd. Sec. 65, Ch. 125, L. 2001.

Part 3
Hearing, Judgment, and Subsequent Proceedings

70-30-301. Hearing — judge to preside — determinations by condemnation commissioners. (1) The condemnation commissioners shall meet at the time and place stated in the order appointing them. The meeting time may not be more than 10 days after the order of appointment. The commissioners shall examine the lands sought to be taken. At a time appointed by the judge and within the 10-day period, the commissioners shall hear the allegations and evidence of all persons interested in each parcel of land.

(2) The hearing must be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) (a) At the conclusion of the hearing, the judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, based solely upon their examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the appropriate findings provided for in subsections (3)(b) through (3)(d).

(b) The commissioners shall determine the current fair market value of the real property sought to be taken and all improvements pertaining to the real property and of each separate estate and interest in the real property and improvements. If the real property consists of different parcels, the current fair market value of each parcel and each estate or interest in the real property must be separately assessed.

(c) (i) If the property sought to be taken constitutes only a part of a larger parcel, the commissioners shall determine the depreciation in current fair market value that will accrue to the remaining parcel by reason of the condemnation and the construction of the improvements in the manner proposed by the condemnor.

(ii) The commissioners shall also determine how much the remaining parcel and each estate or interest in the remaining parcel will be benefited, if at all, by the construction of the improvements proposed by the condemnor. If the benefit is equal to the amount assessed under subsection (3)(c)(i), the compensation to the condemnee is limited to the value of the portion taken. However, if the benefit is less than the amount assessed under subsection (3)(c)(i), the benefit to the condemnee must be deducted from the amount assessed under subsection (3)(c)(i) and the remainder is the only amount allowed in addition to the current fair market value.

(d) If the property sought to be taken is for a railroad, the commissioners shall also determine the cost of good and sufficient fences along the line of the railroad and the cost of cattle guards where fences may cross the line of the railroad.

(e) Through examination of the property, the commissioners shall determine the appropriate payment for damages to the property taken, as well as to any remaining parcel of property that may be adversely impacted by the project, to assist the court in making a final determination pursuant to 70-30-309.

(4) When there are two or more estates or divided interests in property sought to be taken, the condemnor is entitled to have the amount of the award for the property first determined as between the condemnor and all condemnees claiming any interest in the property. In the same proceeding, the respective rights of each of the condemnees in and to the total award must be determined by the commissioners, under supervision and instruction of the court, and the award must be apportioned accordingly.

History: **En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 531, L. 1981; amd. Sec. 3, Ch. 20, L. 2001; amd. Sec. 66, Ch. 125, L. 2001.**

70-30-302. Assessing compensation — date and measure — interest. (1) For the purpose of assessing compensation, the right to compensation is considered to have accrued at the date of the service of the summons, and the property's current fair market value as of that date is the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This subsection may not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order is made allowing the condemnor to take possession, as provided in 60-4-104(4) and (5) and 70-30-311, the full amount finally awarded must draw interest at the rate of 10% a year from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if an appeal is filed, the date of final decision by the supreme court; or

(b) the date on which the condemnee withdraws from the court the full amount finally awarded.

(3) If the condemnee withdraws from the court a fraction of the amount finally awarded, interest on that fraction ceases on the date it is withdrawn but interest on the remainder of the amount finally awarded continues to the earlier of the dates referred to in subsections (2)(a) and (2)(b) until the full amount is withdrawn from the court.

(4) None of the amount finally awarded draws interest after the date on which the right to appeal to the Montana supreme court expires.

(5) Improvements put upon the property subsequent to the date of the service of summons may not be included in the assessment of compensation or depreciation in current fair market value and may not be used as the basis of computing compensation or depreciation.

History: **En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1249; re-en. Sec. 9945, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1967; amd. Sec. 12, Ch. 212, L. 1969; amd. Sec. 208, Ch. 316, L. 1974; amd. Sec. 1, Ch. 534, L. 1975; R.C.M. 1947, 93-9913; amd. Sec. 1, Ch. 257, L. 1981; amd. Sec. 2, Ch. 531, L. 1981; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 67, Ch. 125, L. 2001; amd. Sec. 2, Ch. 330, L. 2003.**

70-30-303. Final report and award of condemnation commissioners — procedure on failure to agree. (1) The report of the condemnation commissioners must be made on forms that are provided for their use by the court. The report must be filed within 10 days after the completion of the hearing or within any additional time allowed by the judge upon a clear showing of necessity. The report must be filed with the clerk of court. The clerk shall notify the parties that the report has been filed. The notice, together with a copy of the report, must be served upon all the parties in the same manner as a summons.

(2) A concurrence of two commissioners is necessary to the making of a final report or award as to any parcel of property or interest in a parcel of property. If two of the commissioners are unable to agree as to the amount of any award, the commissioners shall report the fact to the judge or court within the time specified in subsection (1) and the court shall impanel and appoint new commissioners. The new commissioners shall proceed as provided in this part to determine any award upon which the previous commissioners failed to agree.

(3) The report of the commissioners must include a statement of the number of days or portions of days worked by the commissioners in performance of their duties.

History: En. Sec. 2223, C. Civ. Proc. 1895; re-en. Sec. 7343, Rev. C. 1907; re-en. Sec. 9946, R.C.M. 1921; re-en. Sec. 9946, R.C.M. 1935; amd. Sec. 6, Ch. 234, L. 1961; R.C.M. 1947, 93-9914; amd. Sec. 27, Ch. 115, L. 1979; amd. Sec. 68, Ch. 125, L. 2001.

70-30-304. Appeal to district court from assessment of condemnation commissioners. (1) Any party may appeal from any assessment made by the condemnation commissioners in the court in which the report of the commissioners is filed. The appeal must be taken within 30 days after the service upon the parties of the notice of the filing of the award. The appealing party shall serve notice of the appeal upon the opposing party or the opposing party's attorney and shall file the notice of appeal in the district court in which the action is pending. The appeal must be tried upon the same notice and in the same manner as other civil actions. Unless a jury is waived by the consent of all parties to the appeal, the appeal must be tried by a jury. The amount to which the condemnee may be entitled, by reason of the taking of the condemnee's property, must be reassessed as prescribed in this part for the assessment of that amount by the commissioners.

(2) Upon any verdict or assessment by the commissioners becoming final, judgment must be entered declaring that upon payment of the amount of the verdict or assessment, together with the interests and costs allowed by law, if any, the condemnor has the right to construct and maintain the public use project and to take the property described in the verdict or assessment for the use and purposes for which the property has been taken. The rights granted in the verdict or assessment remain in the condemnor and the condemnor's heirs, successors, or assigns forever.

(3) If the party appealing from the award of the commissioners does not succeed in changing to the appellant's advantage the amount finally awarded in the proceeding, the appellant may not recover the costs of the appeal, but all the costs of the appellee in the appeal must be taxed against and recovered from the appellant. However, upon the trial of the appeal, the appellant may contest the right of any party to any of the property mentioned and set forth or involved in the appeal that was located after the preliminary survey of any highway or railroad, seeking to condemn a right-of-way pursuant to the provisions of this chapter if the condemnation proceedings are begun within 1 year after the preliminary survey.

History: En. Sec. 608, p. 220, L. 1887; re-en. Sec. 2224, C. Civ. Proc. 1895; re-en. Sec. 7344, Rev. C. 1907; re-en. Sec. 9947, R.C.M. 1921; amd. Sec. 1, Ch. 145, L. 1927; re-en. Sec. 9947, R.C.M. 1935; amd. Sec. 7, Ch. 234, L. 1961; R.C.M. 1947, 93-9915; amd. Sec. 69, Ch. 125, L. 2001.

70-30-305. Condemnor to make offer upon appeal — award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the condemnation commissioner's award or report or not more than 60 days after the waiver of appointment of commissioners, submit to the condemnee a written final offer of judgment for the property sought to be taken, together with the accrued necessary expenses of the condemnee. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service of the acceptance, and judgment must be entered. An offer not accepted is considered withdrawn and evidence of the offer is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the condemnee prevails either by the court not allowing condemnation or by the condemnee receiving an award in excess of the final written offer of the condemnor that was rejected pursuant to the facts necessary in 70-30-111(1)(d), the court shall award necessary expenses of litigation to the condemnee.

History: En. 93-9921.1 by Sec. 1, Ch. 453, L. 1973; R.C.M. 1947, 93-9921.1; amd. Sec. 2, Ch. 8, L. 1979; amd. Sec. 70, Ch. 125, L. 2001; amd. Sec. 5, Ch. 371, L. 2013.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

70-30-306. Necessary expenses of litigation defined. (1) Necessary expenses of litigation as authorized by 70-30-305 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs, and court costs.

(2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services in the county in which the trial is held. Reasonable and necessary attorney fees must be computed on an hourly basis and may not be computed on the basis of any contingent fee contract.

(3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services of a witness of that expertise in the county in which the trial is held.

History: En. 93-9921.2 by Sec. 1, Ch. 48, L. 1977; R.C.M. 1947, 93-9921.2; amd. Sec. 71, Ch. 125, L. 2001.

70-30-307. When payment of compensation to be made — deposit of bond. In a proceeding for condemnation for a railroad, the condemnor shall within 30 days after final judgment pay the sum of money assessed but may at the time of or before the payment elect to build any required fences and cattle guards. A condemnor who elects to build the required fences and cattle guards shall execute to the condemnee a bond with sureties to be approved by the court, in double the assessed cost of the fences and cattle guards, conditioned upon building the fences and cattle guards within 8 months from the time the railroad is built on the land taken. If the bond is given, the condemnor is not required to pay the cost of the fences and cattle guards. In an action on the bond, the condemnee may recover reasonable attorney fees.

History: En. Sec. 593, p. 194, L. 1877; re-en. Sec. 593, 1st Div. Rev. Stat. 1879; re-en. Sec. 611, 1st Div. Comp. Stat. 1887; amd. Sec. 2226, C. Civ. Proc. 1895; re-en. Sec. 7346, Rev. C. 1907; re-en. Sec. 9949, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1251; re-en. Sec. 9949, R.C.M. 1935; R.C.M. 1947, 93-9917; amd. Sec. 72, Ch. 125, L. 2001.

70-30-308. How payment made — execution or annulment for nonpayment. (1) Payment may be made to the condemnee, or the money may be deposited in court for the condemnee and be distributed pursuant to the assessment or judgment. However, at the option of the condemnee, payments may be made:

(a) on an annual basis, using the installment contract method; or

(b) if other land is reasonably available and the condemnor consents, by means of a land exchange between the condemnee and condemnor if the land to be provided by the condemnor in the exchange is of equal or more value than the land being condemned.

(2) If the money is not paid or deposited, the condemnee may have execution as in civil cases, and if the money cannot be executed upon, the court, upon a showing to that effect, shall set aside and annul the entire proceedings and restore possession of the property to the condemnee if possession has been taken by the condemnor.

History: En. Sec. 594, p. 194, L. 1877; re-en. Sec. 594, 1st Div. Rev. Stat. 1879; re-en. Sec. 612, 1st Div. Comp. Stat. 1887; re-en. Sec. 2227, C. Civ. Proc. 1895; re-en. Sec. 7347, Rev. C. 1907; re-en. Sec. 9950, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1252; re-en. Sec. 9950, R.C.M. 1935; R.C.M. 1947, 93-9918; amd. Sec. 3, Ch. 531, L. 1981; amd. Sec. 8, Ch. 622, L. 1983; amd. Sec. 73, Ch. 125, L. 2001.

70-30-309. Final order of condemnation — contents — vesting upon filing. (1) When payments have been made and the bond, if appropriate, has been given as required by 70-30-307 and 70-30-308, the court shall make a final order of condemnation. The order must describe the property condemned, the purposes of the condemnation, and any appropriate payment for damages to the property actually taken as well as to any remaining parcel of property that may be adversely affected by the taking.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and upon filing, the property described in the order vests in the condemnor for the purposes specified in the order.

History: En. Sec. 595, p. 195, L. 1877; re-en. Sec. 595, 1st Div. Rev. Stat. 1879; re-en. Sec. 613, 1st Div. Comp. Stat. 1887; re-en. Sec. 2228, C. Civ. Proc. 1895; re-en. Sec. 7348, Rev. C. 1907; re-en. Sec. 9951, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1253; re-en. Sec. 9951, R.C.M. 1935; R.C.M. 1947, 93-9919; amd. Sec. 9, Ch. 622, L. 1983; amd. Sec. 4, Ch. 20, L. 2001; amd. Sec. 74, Ch. 125, L. 2001.

70-30-310. New proceedings to cure defective title. If the title to property attempted to be acquired is found to be defective from any cause, the condemnor may again institute proceedings to acquire the property, as prescribed in this chapter.

History: En. Sec. 592, p. 194, L. 1877; re-en. Sec. 592, 1st Div. Rev. Stat. 1879; re-en. Sec. 610, 1st Div. Comp. Stat. 1887; re-en. Sec. 2225, C. Civ. Proc. 1895; re-en. Sec. 7345, Rev. C. 1907; re-en. Sec. 9948, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1250; re-en. Sec. 9948, R.C.M. 1935; R.C.M. 1947, 93-9916; amd. Sec. 75, Ch. 125, L. 2001.

70-30-311. Putting condemnor in possession. (1) At any time after the filing of the preliminary condemnation order pursuant to 70-30-206 or an order as provided in 60-4-104(4) and (5) and while it retains jurisdiction, the court upon application of the condemnor may make an order that:

(a) upon payment into court of the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation under 70-30-207 or the amount assessed either by the commissioners or by the jury, the condemnor is authorized:

(i) if already in possession of the property of the condemnee that is sought to be taken, to continue in possession; or

(ii) if not in possession, to take possession of the property and use and possess the property during the pendency and until the final conclusion of the proceedings and litigation; and

(b) all actions and proceedings against the condemnor on account of the possession are stayed until the final conclusion of the proceedings and litigation.

(2) If the condemnee fails to file a statement of claim of just compensation within the time specified in 70-30-207, the condemnor may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a condemnor's payment into court must be made within 10 days of receipt of the condemnee's statement of claim.

(3) However, when an appeal is taken by the condemnee, the court may require the condemnor before continuing or taking possession, in addition to paying into court the amount assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the court may direct, conditioned to pay the condemnee any additional damages and costs above the amount assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for public use.

(4) The amount assessed by the commissioners or by the jury on appeal is considered, for the purposes of this section and until reassessed or changed in the further proceedings, as just compensation for the property taken. However, the condemnor, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as provided in subsection (3), may not be prevented from appealing from the assessment but may appeal in the same manner and with the same effect as if money had not been deposited or security had not been given.

(5) (a) Subject to subsection (5)(b), in all cases in which the condemnor deposits the amount of the assessment and continues in possession or takes possession of the property, as provided in this section, the condemnee, if there is no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money deposited. The demand or receipt may not preclude the condemnee's right of appeal from the assessment. However, if the amount of the assessment is finally reduced on appeal by either party, the condemnee who has received all or any part of the amount deposited is liable to the condemnor for any excess of the amount received over the amount finally assessed, with legal interest on the excess from the time the condemnee received the money deposited. The excess, plus interest, may be recovered by a civil action. Upon any appeal from an assessment by the commissioners to a jury, the jury may make a finding for any amount that it considers appropriate.

(b) The court may not order the delivery to any condemnee of more than 75% of the money deposited on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess of the condemnee's final award in the proceedings.

History: En. Sec. 596, p. 195, L. 1877; re-en. Sec. 596, 1st Div. Rev. Stat. 1879; amd. Sec. 614, 1st Div. Comp. Stat. 1887; amd. Sec. 2, p. 272, L. 1891; en. Sec. 2229, C. Civ. Proc. 1895; re-en. Sec. 7349, Rev. C. 1907; re-en. Sec. 9952, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1254; re-en. Sec. 9952, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1961; R.C.M. 1947, 93-9920; amd. Sec. 10, Ch. 622, L. 1983; amd. Sec. 76, Ch. 125, L. 2001; amd. Sec. 3, Ch. 330, L. 2003.

70-30-312. Appeal to supreme court. (1) Any party interested in the proceedings can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases.

(2) An appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for a period of time and under conditions that the court considers proper.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1241; re-en. Sec. 9937, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-9905(part); amd. Sec. 77, Ch. 125, L. 2001.

70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use and its value for such use, provided current use may not be presumed to be the highest and best use;

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered.

History: En. Sec. 4, Ch. 531, L. 1981; amd. Sec. 11, Ch. 622, L. 1983.

70-30-314. Weed control responsibility. The condemnor, upon taking possession of the land, is responsible for the control and destruction of noxious weeds on the land until natural grasses have taken over the property and noxious weeds have ceased to exist.

History: En. Sec. 5, Ch. 531, L. 1981; amd. Sec. 78, Ch. 125, L. 2001.

Cross-References

Weed control, Title 80, ch. 7, part 7.

70-30-315. Proration of taxes. The condemnor must be assessed the condemnor's pro rata share of taxes for the land being taken as of the date of possession or summons, whichever occurs first. The condemnor must be assessed for all taxes accruing after the date of possession or summons, whichever occurs first.

History: En. Sec. 6, Ch. 531, L. 1981; amd. Sec. 79, Ch. 125, L. 2001.

70-30-316 through 70-30-320 reserved.

70-30-321. Sale of property acquired for public use when use abandoned — procedure. (1) Except as provided in subsection (3), whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons the public use and places the property interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) If the seller decides to sell an interest in real property as set forth in subsection (1), the seller shall publish notice of the public sale in a newspaper published in the county in which the real property is located once a week for 4 successive weeks. The sale must be held in the county where the real property is located. The notice of sale must contain the information required by 77-2-322.

(3) When an interest, other than a fee simple interest, in property that has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which it was acquired is terminated, the property reverts to the original owner or the original owner's successor in interest.

History: En. Sec. 1, Ch. 440, L. 1981; amd. Sec. 1, Ch. 689, L. 1983; amd. Sec. 80, Ch. 125, L. 2001.

70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or the owner's successor in interest, if there is a successor in interest, must be notified by the seller by certified mail and has a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering an amount of money equal to the highest bid received for the interest at the sale.

(2) If bids are not received by the seller and the optionholder indicates in writing to the seller that the optionholder wishes to exercise the option, the seller must have the real property interest appraised and shall sell the interest at that price to the optionholder.

(3) When an interest, other than a fee simple interest, in property that has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which it was acquired is terminated, the property reverts to the original owner or the original owner's successor in interest.

History: En. Sec. 2, Ch. 440, L. 1981; amd. Sec. 2, Ch. 689, L. 1983; amd. Sec. 4, Ch. 666, L. 1985; amd. Sec. 81, Ch. 125, L. 2001; amd. Sec. 4, Ch. 512, L. 2007.

70-30-323. Liability limitation — several liability — defense costs. (1) Subject to subsection (2), a condemnee or a condemnee's successor in interest is not liable for damages that result from the construction, use, or maintenance of a project on property in which the condemnee or the condemnee's successor in interest has an interest unless the negligence or intentional conduct of the condemnee or the condemnee's successor in interest is a cause of the damages.

(2) A condemnee or a condemnee's successor in interest who is liable for damages under subsection (1) is severally liable only and is responsible only for the percentage of negligence attributable to the condemnee or the condemnee's successor in interest.

(3) If a condemnee or a condemnee's successor in interest is joined in an action for damages that are alleged to result from the construction, use, or maintenance of a project on property in which the condemnee or the condemnee's successor in interest has an interest, the project owner or operator is liable for the costs and attorney fees incurred by the condemnee or the condemnee's successor in interest unless the condemnee or the condemnee's successor in interest is found liable for damages under subsections (1) and (2).

History: En. Sec. 1, Ch. 113, L. 2001.

CHAPTER 31
RELOCATION ASSISTANCE
FAIR TREATMENT OF CONDEMNEES

Part 1 — General Provisions

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70-31-302. Reimbursement of closing costs and taxes incurred by owner.
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70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned.
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Part 1
General Provisions

70-31-101. Purpose. It is the purpose of this chapter to:

(1) provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of federally assisted programs;

(2) establish uniform and equitable land acquisition policies for federally assisted programs; and

(3) comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

History: En. Sec. 1, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9927; amd. Sec. 1, Ch. 374, L. 1989.

70-31-102. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Agency" means a department, agency, or instrumentality of the state of Montana or of a political subdivision of the state, a department, agency, or instrumentality of two or more states or two or more political subdivisions of the state or of two or more states, or a person who has the authority to acquire property by eminent domain as provided in Title 70, chapter 30.

(2) "Appraisal" means a written statement, independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date and supported by the presentation and analysis of relevant market information.

(3) "Average annual net earnings" means one-half of any net earnings of a business or farm operation, before federal and state income taxes, during the 2 tax years immediately preceding the tax year in which the business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during any other period that the acquiring agency determines to be more equitable for establishing earnings and includes any compensation paid by the business or farm operation to the owner, the owner's spouse, or the owner's dependents during the period.

(4) "Business" means any lawful activity, except a farm operation, conducted:

(a) primarily for the purchase, sale, lease, and rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) primarily for the sale of services to the public;

(c) primarily by a nonprofit organization; or

(d) solely for the purposes of paying moving or related expenses to assist in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the activities included as a business are conducted.

(5) (a) "Displaced person" means:

(i) any person who moves from real property or moves that person's personal property from real property:

(A) as a direct result of a written notice of intent to acquire or by the acquisition of the real property, in whole or in part, for a program or project undertaken by a displacing agency for which federal financial assistance will be available to pay all or any part of the cost; or

(B) on which the person is a residential tenant or conducts a small business, farm operation, or a business defined in subsection (4)(d), as a direct result of rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent and for which federal financial assistance will be available to pay all or any part of the cost;

(ii) any person who, for purposes of providing moving and related expenses or relocation advisory services only, moves from real property or moves that person's personal property from real property as a direct result of:

(A) a written notice of intent to acquire or as a direct result of the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(B) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent.

(b) The term "displaced person" does not include a person who:

(i) has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining assistance under this part; or

(ii) occupies property owned by the agency on a short-term rental basis or for a period subject to termination when the property is needed for the program or project and who was not an occupant of the property at the time it was acquired by the agency.

(6) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing agricultural products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

(8) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

(9) "Person" means any individual, partnership, corporation, or association.

History: En. Sec. 2, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9928; amd. Sec. 2, Ch. 374, L. 1989; amd. Sec. 82, Ch. 125, L. 2001.

70-31-103. Application to all federally assisted programs. This chapter shall apply to all acquisitions of real property by an agency for a program or project for which federal financial assistance is available to pay all or any part of the cost.

History: En. Sec. 18, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9944.

70-31-104. New rights and powers not created. (1) This chapter may not be construed as creating, in any condemnation proceedings brought under the power of eminent domain as provided in Title 70, chapter 30, any element of value or damage that is not in existence immediately prior to July 1, 1971.

(2) This chapter may not be construed as, directly or indirectly, granting any new or additional power of eminent domain.

History: En. Sec. 17, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9943(2), (3); amd. Sec. 83, Ch. 125, L. 2001.

70-31-105. Duplication of eminent domain payments not intended. A payment or assistance provided for in this chapter may not be required to be made by an agency if the displaced person receives a payment required under Title 60, chapter 4, or Title 70, chapter 30, that is determined by the agency to have substantially the same purpose and effect as a payment under this chapter.

History: En. Sec. 16, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9942; amd. Sec. 84, Ch. 125, L. 2001.

70-31-106. Payments not income under tax laws or other assistance laws. No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility of any person for assistance under any state law or for the purposes of determining income under state tax laws.

History: En. Sec. 9, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9935.

70-31-107 through 70-31-110 reserved.

70-31-111. Rulemaking authority. An agency, as defined in 2-3-102, is authorized to adopt necessary rules to implement this chapter.

History: En. Sec. 4, Ch. 374, L. 1989.

Part 2
Relocation Payments, Assistance, and Advisory Services
(Repealed)

70-31-201. Repealed. Sec. 6, Ch. 374, L. 1989.

History: En. Sec. 3, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9929.

70-31-202. Repealed. Sec. 6, Ch. 374, L. 1989.
History: **En. Sec. 4, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9930.**

70-31-203. Repealed. Sec. 6, Ch. 374, L. 1989.
History: **En. Sec. 5, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9931.**

70-31-204. Repealed. Sec. 6, Ch. 374, L. 1989.
History: **En. Sec. 6, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9932.**

70-31-205. Repealed. Sec. 6, Ch. 374, L. 1989.
History: **En. Secs. 7, 17, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9933, 93-9943(1).**

70-31-206. Repealed. Sec. 6, Ch. 374, L. 1989.
History: **En. Sec. 8, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9934.**

70-31-207. Repealed. Sec. 6, Ch. 374, L. 1989.
History: **En. Sec. 10, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9936.**

Part 3

Rights and Duties Relating to Condemnation

70-31-301. Appraisal, negotiation, and other condemnation policies mandated. An agency that acquires real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to expeditiously acquire real property by negotiation.

(2) Real property must be appraised before the initiation of negotiations, and the owner or the owner's designated representative must be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. The head of the agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, an amount must be established that is reasonably believed to be just compensation for the property or interest taken, and that amount must be offered for the property. The amount may not be less than the approved appraisal of the fair market value of the property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for the improvement, other than an amount due to physical deterioration within the reasonable control of the owner, must be disregarded in determining the compensation for the property. The owner of the real property to be acquired must be provided with a written statement of and summary of the basis for the amount established as just compensation. When appropriate, the just compensation for the real property acquired and for damages to remaining real property must be separately stated.

(4) An owner may not be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of the property or the amount of the award of compensation in the condemnation proceeding of the property.

(5) The construction or development of a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) must be scheduled so that, to the greatest extent practicable, a person lawfully occupying real property is not required to move from a dwelling (assuming a replacement dwelling will be available) or to move the person's business or farm operation without at least 90 days' written notice of the date by which a move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required may not exceed the fair rental value of the property to a short-term occupier.

(7) The time of condemnation may not be advanced, negotiations or condemnation and the deposit of funds in court for the use of the owner may not be deferred, and any other action coercive in nature may not be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings must be instituted as provided in Title 70, chapter 30. The acquiring agency may not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the uneconomic remnant must be made.

(10) A person whose real property is being acquired may, after being fully informed of the person's right to receive just compensation, donate to an agency the property, any interest in the property, or any compensation received for the property.

History: En. Sec. 11, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9937; amd. Sec. 5, Ch. 374, L. 1989; amd. Sec. 85, Ch. 125, L. 2001.

70-31-302. Reimbursement of closing costs and taxes incurred by owner. An agency acquiring real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner to the extent the acquiring agency considers fair and reasonable for:

(1) expenses the owner necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring agency;

(2) penalty costs for prepayment for any preexisting recorded mortgage or deed of trust entered into in good faith encumbering the real property; and

(3) the pro rata portion of real property taxes paid that are allocable to a period subsequent to the date of vesting title in the acquiring agency or the effective date of possession of the real property by the acquiring agency, whichever is earlier.

History: En. Sec. 12, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9938; amd. Sec. 2231, Ch. 56, L. 2009.

70-31-303. Inverse condemnation — reimbursement of expenses of proceeding. When an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of the owner's property for any program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project, the court rendering a judgment for the plaintiff in the proceeding and awarding compensation for the taking of property or the attorney for the acquiring agency effecting a settlement of any proceeding shall determine and award or allow to the plaintiff as a part of the judgment or settlement a sum that will, in the opinion of the court or the attorney, reimburse the plaintiff for the plaintiff's reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding.

History: En. Sec. 14, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9940; amd. Sec. 2232, Ch. 56, L. 2009.

70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned. When a condemnation proceeding is instituted by an agency to acquire real property for a program or project for which federal financial assistance is available and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in the real property must be paid a sum that will, in the opinion of the court, reimburse the owner for the owner's reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. The award of the sum must be paid by the agency that sought to condemn the property.

History: En. Sec. 13, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9939; amd. Sec. 2233, Ch. 56, L. 2009.

70-31-305. Acquisition of buildings and improvements affected. (1) When any interest in real property is acquired for a program or project for which federal assistance will be available to pay all or any part of the cost of the program or project, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements that are located upon the real property acquired and that are required to be removed from the real property or that the acquiring agency determines will be adversely affected by the use to which the real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1), the building, structure, or other improvement is considered to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term. The fair market value that the building, structure, or improvement contributes to the fair market value of the real property to be acquired or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, must be paid to the tenant.

(3) Payment for buildings, structures, or improvements as set forth in subsection (2) may not result in duplication of any payments otherwise authorized by state law. A payment may not be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any payment, the tenant shall assign, transfer, and release all of the tenant's right, title, and interest in and to the improvements. Subsection (2) or this subsection may not be construed to deprive the tenant of any rights to reject payment and to obtain payment for the property interests in accordance with other laws of the state.

History: En. Sec. 15, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9941; amd. Sec. 2234, Ch. 56, L. 2009.

70-31-306 through 70-31-310 reserved.

70-31-311. Relocation payments and assistance. For any project that results in the displacement of a person from the person's home, business, or farm and for which federal financial assistance may be available to pay all or any part of the cost of displacement, an entity of the state or any public or private entity that has the authority to acquire property by eminent domain under Title 60, chapter 4, or Title 70, chapter 30, is authorized to provide relocation assistance and to make relocation payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq., as amended. The entity is authorized to do what may be necessary or required to obtain for property owners the full benefit of federal relocation assistance, including the adoption of methods of administration that may be required by federal law or rules to carry out the operation of relocation assistance.

History: En. Sec. 3, Ch. 374, L. 1989; amd. Sec. 86, Ch. 125, L. 2001.

CHAPTER 32
HOMESTEADS

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Chapter Cross-References

Exemption laws, Art. XIII, sec. 5, Mont. Const.
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Homestead exempt from execution, 25-13-615.
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UPC — homestead allowance, 72-2-412.
UPC — exempt property, 72-2-413.
UPC — family allowance, 72-2-414.

Part 1
Establishment of the Homestead

70-32-101. Of what homestead consists. The homestead consists of the dwelling house or mobile home, and all appurtenances, in which the claimant resides and the land, if any, on which the same is situated, selected as provided in this chapter.

History: En. Sec. 1670, Civ. C. 1895; re-en. Sec. 4694, Rev. C. 1907; re-en. Sec. 6945, R.C.M. 1921; Cal. Civ. C. Sec. 1237; re-en. Sec. 6945, R.C.M. 1935; R.C.M. 1947, 33-101; amd. Sec. 1, Ch. 370, L. 1981.

70-32-102. Repealed. Sec. 9, Ch. 370, L. 1981.

History: En. Sec. 1694, Civ. C. 1895; re-en. Sec. 4718, Rev. C. 1907; re-en. Sec. 6969, R.C.M. 1921; Cal. Civ. C. Sec. 1261; amd. Sec. 1, Ch. 86, L. 1925; re-en. Sec. 6969, R.C.M. 1935; amd. Sec. 3, Ch. 1, L. 1975; R.C.M. 1947, 33-125.

70-32-103. From whose property homestead may be selected — revocable trust disregarded. (1) If the claimant is married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of the claimant's property.

(2) A homestead may be selected from property contributed by the settlor to a revocable trust when the property would otherwise qualify under this chapter if it were not for the transfer of property to the revocable trust. For the purpose of this chapter, the claimant is the husband, wife, or unmarried person that is the settlor of the revocable trust. All provisions of this chapter apply to the settlor claimant in the same manner as an individual claimant, regardless of trust status.

(3) For the purposes of this section, "revocable" and "settlor" have the same meaning as provided in 72-38-103.

History: En. Sec. 1671, Civ. C. 1895; re-en. Sec. 4695, Rev. C. 1907; re-en. Sec. 6946, R.C.M. 1921; Cal. Civ. C. Sec. 1238; re-en. Sec. 6946, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1975; R.C.M. 1947, 33-102; amd. Sec. 2, Ch. 370, L. 1981; amd. Sec. 2235, Ch. 56, L. 2009; amd. Sec. 1, Ch. 33, L. 2021.

70-32-104. Limitation on value. (1) A homestead may not exceed the value provided in subsection (3). In a proceeding instituted to determine the value of the homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as it appears on the last-completed assessment roll preceding the institution of the proceeding is prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, the claimant is limited to an exemption amount proportional to the claimant's undivided interest.

(3) (a) The department of revenue shall adopt administrative rules setting the homestead value limit.

(b) In 2021, the homestead value limit is $350,000.

(c) The homestead value limit must increase by 4% every calendar year after 2021.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R.C.M. 1921; Cal. Civ. C. Sec. 1260; amd. Sec. 1, Ch. 126, L. 1931; re-en. Sec. 6968, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965; amd. Sec. 1, Ch. 300, L. 1973; R.C.M. 1947, 33-124; amd. Sec. 3, Ch. 370, L. 1981; amd. Sec. 8, Ch. 302, L. 1987; amd. Sec. 1, Ch. 30, L. 1997; amd. Sec. 1, Ch. 451, L. 2001; amd. Sec. 1, Ch. 99, L. 2007; amd. Sec. 1, Ch. 442, L. 2021.

70-32-105. Mode of selection — declaration required. The person selecting a homestead must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead and file the same for record.

History: En. Sec. 1700, Civ. C. 1895; re-en. Sec. 4719, Rev. C. 1907; re-en. Sec. 6970, R.C.M. 1921; Cal. Civ. C. Sec. 1262; re-en. Sec. 6970, R.C.M. 1935; amd. Sec. 4, Ch. 1, L. 1975; R.C.M. 1947, 33-126; amd. Sec. 4, Ch. 370, L. 1981.

70-32-106. Contents of declaration. Subject to 70-32-216, the declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.

History: En. Sec. 1701, Civ. C. 1895; re-en. Sec. 4720, Rev. C. 1907; re-en. Sec. 6971, R.C.M. 1921; Cal. Civ. C. Sec. 1263; re-en. Sec. 6971, R.C.M. 1935; amd. Sec. 5, Ch. 1, L. 1975; R.C.M. 1947, 33-127; amd. Sec. 5, Ch. 370, L. 1981; amd. Sec. 95, Ch. 2, L. 2009.

70-32-107. Declaration to be recorded. The declaration must be recorded in the office of the county clerk of the county in which the land is situated.

History: En. Sec. 1702, Civ. C. 1895; re-en. Sec. 4721, Rev. C. 1907; re-en. Sec. 6972, R.C.M. 1921; Cal. Civ. C. Sec. 1264; re-en. Sec. 6972, R.C.M. 1935; R.C.M. 1947, 33-128.

Part 2
Homestead Exemption — Execution

70-32-201. Homestead exempt from execution generally. The homestead is exempt from execution or forced sale, except as in this chapter provided.

History: En. Sec. 1673, Civ. C. 1895; re-en. Sec. 4697, Rev. C. 1907; re-en. Sec. 6948, R.C.M. 1921; Cal. Civ. C. Sec. 1240; re-en. Sec. 6948, R.C.M. 1935; R.C.M. 1947, 33-104.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.
Exempt property — bankruptcy proceeding, 31-2-106.

70-32-202. Execution allowed under certain judgments. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(1) on debts secured by construction or vendors' liens upon the premises;

(2) on debts secured by mortgages on the premises, executed and acknowledged by the husband and wife or by an unmarried claimant; or

(3) on debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

History: En. Sec. 1674, Civ. C. 1895; re-en. Sec. 4698, Rev. C. 1907; re-en. Sec. 6949, R.C.M. 1921; Cal. Civ. C. Sec. 1241; re-en. Sec. 6949, R.C.M. 1935; R.C.M. 1947, 33-105(part); amd. Sec. 6, Ch. 370, L. 1981.

70-32-203. Execution under judgments not enumerated — application required. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in 70-32-202 is levied upon the homestead, the judgment creditor may apply to the district court of the county in which the homestead is situated or a judge thereof for the appointment of persons to appraise the value thereof.

History: En. Sec. 1678, Civ. C. 1895; re-en. Sec. 4702, Rev. C. 1907; re-en. Sec. 6953, R.C.M. 1921; Cal. Civ. C. Sec. 1245; re-en. Sec. 6953, R.C.M. 1935; R.C.M. 1947, 33-109.

70-32-204. Application for appraisal — contents — filing. (1) The application must be made upon a verified petition showing:

(a) the fact that an execution has been levied upon the homestead;

(b) the name of the claimant;

(c) that the value of the homestead exceeds the amount of the homestead exemption.

(2) The petition must be filed with the clerk of the district court.

History: En. Secs. 1679, 1680, Civ. C. 1895; re-en. Secs. 4703, 4704, Rev. C. 1907; re-en. Secs. 6954, 6955, R.C.M. 1921; Cal. Civ. C. Secs. 1246, 1247; re-en. Secs. 6954, 6955, R.C.M. 1935; R.C.M. 1947, 33-110, 33-111.

70-32-205. Service of petition — notice of hearing. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant at least 2 days before the hearing.

History: En. Sec. 1681, Civ. C. 1895; re-en. Sec. 4705, Rev. C. 1907; re-en. Sec. 6956, R.C.M. 1921; Cal. Civ. C. Sec. 1248; re-en. Sec. 6956, R.C.M. 1935; R.C.M. 1947, 33-112.

70-32-206. Appointment of appraisers — oath. (1) At the hearing the judge may, upon proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint three disinterested residents and freeholders of the county to appraise the value of the homestead.

(2) The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

History: En. Secs. 1682, 1683, Civ. C. 1895; re-en. Secs. 4706, 4707, Rev. C. 1907; re-en. Secs. 6957, 6958, R.C.M. 1921; Cal. Civ. C. Secs. 1249, 1250; re-en. Secs. 6957, 6958, R.C.M. 1935; R.C.M. 1947, 33-113, 33-114.

70-32-207. Duty of appraisers. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

History: En. Sec. 1684, Civ. C. 1895; re-en. Sec. 4708, Rev. C. 1907; re-en. Sec. 6959, R.C.M. 1921; Cal. Civ. C. Sec. 1251; re-en. Sec. 6959, R.C.M. 1935; R.C.M. 1947, 33-115.

70-32-208. Report of appraisers — contents. Within 15 days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

History: En. Sec. 1685, Civ. C. 1895; re-en. Sec. 4709, Rev. C. 1907; re-en. Sec. 6960, R.C.M. 1921; Cal. Civ. C. Sec. 1252; re-en. Sec. 6960, R.C.M. 1935; R.C.M. 1947, 33-116.

70-32-209. Order dividing land — execution against remainder over exemption. If from the report it appears to the judge that the land claimed can be divided without material injury, the judge shall by an order direct the appraisers to set off to the claimant as much of the land, including the residence, that will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

History: En. Sec. 1686, Civ. C. 1895; re-en. Sec. 4710, Rev. C. 1907; re-en. Sec. 6961, R.C.M. 1921; Cal. Civ. C. Sec. 1253; re-en. Sec. 6961, R.C.M. 1935; R.C.M. 1947, 33-117; amd. Sec. 2236, Ch. 56, L. 2009.

70-32-210. Sale when land cannot be divided. If from the report it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, the judge shall make an order directing its sale under execution.

History: En. Sec. 1687, Civ. C. 1895; re-en. Sec. 4711, Rev. C. 1907; re-en. Sec. 6962, R.C.M. 1921; Cal. Civ. C. Sec. 1254; re-en. Sec. 6962, R.C.M. 1935; R.C.M. 1947, 33-118; amd. Sec. 2237, Ch. 56, L. 2009.

70-32-211. Amount of bid. At such sale no bid must be received unless it exceeds the amount of the homestead exemption.

History: En. Sec. 1688, Civ. C. 1895; re-en. Sec. 4712, Rev. C. 1907; re-en. Sec. 6963, R.C.M. 1921; Cal. Civ. C. Sec. 1255; re-en. Sec. 6963, R.C.M. 1935; R.C.M. 1947, 33-119.

70-32-212. Application of proceeds of sale. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution.

History: En. Sec. 1689, Civ. C. 1895; re-en. Sec. 4713, Rev. C. 1907; re-en. Sec. 6964, R.C.M. 1921; Cal. Civ. C. Sec. 1256; re-en. Sec. 6964, R.C.M. 1935; R.C.M. 1947, 33-120.

70-32-213. Sale proceeds equal to exemption protected. The money paid to the claimant is entitled, for the period of 18 months thereafter, to the same protection against legal process and the voluntary disposition of either spouse which the law gives to the homestead.

History: En. Sec. 1690, Civ. C. 1895; re-en. Sec. 4714, Rev. C. 1907; re-en. Sec. 6965, R.C.M. 1921; Cal. Civ. C. Sec. 1257; re-en. Sec. 6965, R.C.M. 1935; amd. Sec. 2, Ch. 1, L. 1975; R.C.M. 1947, 33-121; amd. Sec. 9, Ch. 302, L. 1987.

70-32-214. Compensation of appraisers. The court must fix a reasonable amount as compensation for the appraisers.

History: En. Sec. 1691, Civ. C. 1895; re-en. Sec. 4715, Rev. C. 1907; re-en. Sec. 6966, R.C.M. 1921; Cal. Civ. C. Sec. 1258; re-en. Sec. 6966, R.C.M. 1935; R.C.M. 1947, 33-122; amd. Sec. 10, Ch. 302, L. 1987.

70-32-215. Costs. The execution creditor must pay the costs of these proceedings in the first instance, but in the cases provided for in 70-32-209 and 70-32-210, the amount so paid must be added as costs on execution and collected accordingly.

History: En. Sec. 1692, Civ. C. 1895; re-en. Sec. 4716, Rev. C. 1907; re-en. Sec. 6967, R.C.M. 1921; Cal. Civ. C. Sec. 1259; re-en. Sec. 6967, R.C.M. 1935; R.C.M. 1947, 33-123.

70-32-216. Tracing homestead proceeds. (1) If property or a part of property that could have been claimed as an exempt homestead has been sold or taken by condemnation, as provided in Title 60, chapter 4, or Title 70, chapter 30, or has been lost, damaged, or destroyed and the owner has been indemnified for the property, the owner is entitled for 18 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

History: En. Sec. 6, Ch. 302, L. 1987; amd. Sec. 87, Ch. 125, L. 2001.

Cross-References

Tracing exempt personal property, 25-13-610.

70-32-217 through 70-32-220 reserved.

70-32-221. Repealed. Sec. 5, Ch. 30, L. 2001.

History: En. Sec. 1, Ch. 590, L. 1987; amd. Sec. 2, Ch. 294, L. 1991.

Part 3
Conveyance, Encumbrance, and Abandonment of Homestead

70-32-301. How conveyed or encumbered — instrument. The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.

History: En. Sec. 1675, Civ. C. 1895; re-en. Sec. 4699, Rev. C. 1907; re-en. Sec. 6950, R.C.M. 1921; Cal. Civ. C. Sec. 1242; re-en. Sec. 6950, R.C.M. 1935; R.C.M. 1947, 33-106.

70-32-302. How abandoned — declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and acknowledged by:

(1) the husband and wife if the claimant is married;

(2) the claimant if unmarried.

History: En. Sec. 1676, Civ. C. 1895; re-en. Sec. 4700, Rev. C. 1907; re-en. Sec. 6951, R.C.M. 1921; Cal. Civ. C. Sec. 1243; re-en. Sec. 6951, R.C.M. 1935; R.C.M. 1947, 33-107.

70-32-303. When declaration effective. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

History: En. Sec. 1677, Civ. C. 1895; re-en. Sec. 4701, Rev. C. 1907; re-en. Sec. 6952, R.C.M. 1921; Cal. Civ. C. Sec. 1244; re-en. Sec. 6952, R.C.M. 1935; R.C.M. 1947, 33-108.

CHAPTER 33
MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT

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Part 1
General Provisions

70-33-101. Short title. This chapter may be cited as "The Montana Residential Mobile Home Lot Rental Act".

History: En. Sec. 7, Ch. 267, L. 2007.

70-33-102. Purpose — liberal construction. (1) This chapter must be liberally construed and applied to promote the underlying purposes and policies of this chapter.

(2) The underlying purposes and policies of this chapter are to:

(a) simplify and clarify the law governing the rental of land to owners of mobile homes and manufactured homes and the rights and obligations of landlords and tenants concerning lot rentals;

(b) encourage landlords and tenants to maintain and improve the quality of housing; and

(c) create an exclusive regulatory standard throughout the state and its political subdivisions regarding the rental of land to owners of mobile homes and manufactured homes.

History: En. Sec. 8, Ch. 267, L. 2007; amd. Sec. 3, Ch. 572, L. 2023.

Cross-References

Local government with self-government powers prohibited from deviating from Montana Residential Mobile Home Lot Rental Act, 7-1-111.

70-33-103. Definitions. Unless the context clearly requires otherwise, in this chapter, the following definitions apply:

(1) "Abandon" means to give up possession of the premises unless the landlord does not accept abandonment or surrender as provided in 70-33-426 or unless the rental agreement has been terminated as provided by law.

(2) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(3) "Actual and reasonable cost" means the actual amount of expenses and labor incurred or expended and the reasonable amount of expenses and labor estimated to be incurred or expended.

(4) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including electricity, gas, running water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(5) "Court" means the appropriate district court, small claims court, justice's court, or city court.

(6) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(7) "Landlord" means:

(a) the owner of:

(i) space or land, including a lot, that is rented to a tenant for a mobile home; or

(ii) a mobile home park;

(b) a person who has written authorization from the owner to act as the owner's agent or assignee for purposes related to the premises or the rental agreement;

(c) a manager of the premises who fails to disclose the managerial position; or

(d) a lessor who has written authorization from the owner of the premises to sublease the premises.

(8) "Lot" means the space or land rented and not a mobile home itself.

(9) "Mobile home" has the same meaning as provided in 15-1-101 and includes manufactured homes as defined in 15-1-101.

(10) "Mobile home owner" means the owner of a mobile home entitled under a rental agreement to occupy a lot.

(11) "Mobile home park" means a trailer court as defined in 50-52-101.

(12) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(13) "Person" includes an individual or organization.

(14) "Premises" means a lot and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(15) "Rent" means all payments to be made to a landlord, including rent, late fees, or other charges as agreed on in the rental agreement, except money paid as a security deposit.

(16) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-33-311 embodying the terms and conditions concerning the use and occupancy of the premises.

(17) "Rent payment type" means all forms of payment types, including:

(a) cash;

(b) check;

(c) electronic; or

(d) other forms agreed on in the rental agreement that must comply with 70-24-203.

(18) "Tenant" means:

(a) a person entitled under a rental agreement to occupy a lot to the exclusion of others; or

(b) a person who, with the written approval of the landlord and pursuant to the rental agreement, has a sublease agreement with the person who is entitled to occupy the dwelling unit under the rental agreement.

(19) "Unauthorized person or trespasser" means a person who:

(a) enters or remains after being asked to leave by the landlord and does not receive written permission by the landlord to remain on the premises;

(b) is in violation of 45-6-201;

(c) is in violation of 45-6-203; or

(d) is in violation of 70-27-102.

History: En. Sec. 9, Ch. 267, L. 2007; amd. Sec. 3, Ch. 454, L. 2015; amd. Sec. 10, Ch. 536, L. 2021; amd. Sec. 3, Ch. 768, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 768, L. 2025. Amendment effective June 9, 2025.

70-33-104. Applicability. (1) This chapter applies to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home. This chapter applies to land rental in a mobile home park as well as to the rental of individual parcels of land not in a mobile home park that are for the placement of a tenant's mobile home.

(2) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(a) occupancy under a contract of sale of a lot if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(b) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(c) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(d) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges along with the use of the lot; and

(e) any rental premises that are governed by the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24.

(3) The combined rental of the lot and mobile home, when the landlord owns both, are covered by the Montana Residential Landlord and Tenant Act of 1977.

History: En. Sec. 10, Ch. 267, L. 2007.

70-33-105. Supplementary principles of law. Unless superseded by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement the provisions of this chapter.

History: En. Sec. 11, Ch. 267, L. 2007.

70-33-106. Notice. (1) A person has notice of a fact if:

(a) the person has actual knowledge of the fact;

(b) in the case of a landlord, the notice is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, the notice is personally delivered to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the place held out by the landlord or tenant as the place for receipt of the communication or, in the absence of a designation, to the landlord's or tenant's last-known address. When notice is made by certificate of mailing or certified mail, the service of the notice must be considered to have been made 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction on behalf of the organization and, in any event, from the time the notice would have been brought to the individual's attention if the organization had exercised reasonable diligence.

History: En. Sec. 12, Ch. 267, L. 2007.

70-33-107. Obligation of good faith. Every duty under this chapter and every act that must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History: En. Sec. 13, Ch. 267, L. 2007.

70-33-108. Notice of no contact. (1) Except as provided in 45-5-209, a notice of no contact to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord may only be authorized pursuant to an order of no contact issued by a court of competent jurisdiction if the person receiving the notice of no contact is acting in accordance with the provisions of Title 70, chapter 24, 25, or 33.

(2) Except as provided by 45-5-209 or this section, or if issued pursuant to an order of protection issued by a court of competent jurisdiction, a notice of no contact to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord is invalid.

History: En. Sec. 1, Ch. 297, L. 2015.

70-33-109. Application of security deposit laws. The provisions of this chapter are cohesive with the provisions of Title 70, chapter 25, and the two chapters must be read in conjunction when considering, with regards to the Montana Residential Mobile Home Lot Rental Act, the rights and duties of landlords and tenants, and the availability of remedies and judicial relief to landlords and tenants.

History: En. Sec. 2, Ch. 235, L. 2021.

70-33-110. Emotional support animals — documentation. (1) A tenant with a disability or a disability-related need for an emotional support animal may request and be approved by a landlord to keep an emotional support animal as a reasonable accommodation in housing.

(2) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) deny a reasonable accommodation request for an emotional support animal if the animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property that cannot be reduced or eliminated by another reasonable accommodation;

(b) if a tenant's disability-related need for an emotional support animal is not readily apparent, request supporting information that reasonably supports the tenant's need for the particular emotional support animal being requested. Supporting information must include:

(i) information from a health care practitioner who has personal knowledge of the tenant's disability and is acting within the scope of the practitioner's practice that identifies the particular assistance or therapeutic emotional support provided by the specific animal. Information submitted under this subsection (2)(b)(i) must include the effective date, license number, and type of professional license held by the health care practitioner; or

(ii) information from any other source that the landlord determines to be reliable in accordance with the federal Fair Housing Act and Title 49, chapter 2; and

(c) require proof of compliance with state and local licensure and vaccination requirements for each emotional support animal.

(3) If a tenant requests to keep more than one emotional support animal, information for each emotional support animal must be provided pursuant to subsection (2).

(4) A landlord:

(a) may not request information under this section that discloses a diagnosis or severity of a tenant's disability or any medical records relating to the disability, but a tenant may voluntarily disclose such information or medical records to the landlord at the tenant's discretion; and

(b) shall issue a written determination after receiving supplemental information required in subsection (2) and notice the determination pursuant to 70-33-106.

(5) An emotional support animal registration of any kind, including but not limited to an identification card, patch, certificate, or similar registration obtained electronically or in person, is not, by itself, sufficient information to reliably establish that a tenant has a disability-related need for an emotional support animal.

(6) A tenant with a disability-related need for an emotional support animal is liable for any damage done to the premises or to another person on the premises by the tenant's emotional support animal.

(7) A health care practitioner may be subject to disciplinary action from the health care practitioner's licensing board for a violation of this section.

(8) This section does not apply to a service animal as defined in 49-4-203.

(9) Nothing in this section may be construed to restrict existing federal law and state law related to a person's right to a reasonable accommodation and equal access to housing, including but not limited to the federal Fair Housing Act, the federal Americans with Disabilities Act, or Title 49, chapter 2.

(10) The required submission of documentation by a renter to a landlord verifying the need for an emotional support animal may not be construed to mandate or compel the landlord or a business to permit the entry or presence of the emotional support animal if the landlord or business complies with applicable federal, state, and local laws.

(11) As used in this section, the following definitions apply:

(a) "Emotional support animal" means an animal that a health care practitioner has determined provides emotional, cognitive, or other similar support to an individual with a disability and does not need to be trained or certified. The term does not include service animals as defined in 49-4-203.

(b) "Health care practitioner" means a mental health professional as defined in 53-21-102 who is licensed to practice in this state and who:

(i) has established a client-provider relationship with a tenant at least 30 days prior to providing supporting information requested from a landlord regarding the tenant's need for an emotional support animal;

(ii) completes a clinical evaluation of a tenant regarding the need for an emotional support animal; and

(iii) is acting within the scope of practice of the person's license or certificate.

History: En. Sec. 2, Ch. 284, L. 2023; amd. Sec. 2, Ch. 360, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 360, L. 2025. Amendment effective October 1, 2025.

Part 2
Rental Agreements

70-33-201. Rental agreements. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the rental value for the use and occupancy of the lot as determined by the landlord;

(b) rent is payable at the landlord's address or using electronic funds transfer to an account designated for the payment of rent by the landlord;

(c) periodic rent is payable at the beginning of a term that is a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day;

(e) the tenancy is from month to month; and

(f) if either party terminates the rental agreement without cause prior to the expiration date of the lease term, the aggrieved party is entitled to monetary damages up to 1 month's rent or an amount that is agreed on in the rental agreement, which may not exceed 1 month's rent. Landlords shall follow 70-33-426(2) and are entitled to rent from defaulting tenants up to the date a new tenancy starts or the date the rental agreement term expires.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or as provided by subsection (2).

(4) A landlord may not charge an additional fee based on rent payment type except to recoup an electronic bank fee incurred for electronic payment.

History: En. Sec. 14, Ch. 267, L. 2007; amd. Sec. 3, Ch. 155, L. 2017; amd. Sec. 11, Ch. 536, L. 2021; amd. Sec. 4, Ch. 768, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 768, L. 2025. Amendment effective June 9, 2025.

70-33-202. Prohibited provisions in rental agreements. (1) A rental agreement may not require a party to:

(a) waive or forego rights or remedies under this chapter;

(b) authorize any person to confess judgment on a claim arising out of the rental agreement; or

(c) agree to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or related costs or attorney fees.

(2) A rental agreement or a related document may not permit the receipt of rent free of the obligation to comply with the provisions of 70-33-303.

History: **En. Sec. 15, Ch. 267, L. 2007.**

70-33-203. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement that has already been signed by the tenant and delivered to the landlord, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord to the tenant.

(2) If the tenant does not sign and deliver to the landlord a written rental agreement that has already been signed by the landlord and delivered to the tenant, acceptance of possession of the premises and payment of rent without reservation by the tenant gives the rental agreement the same effect as if it had been signed and delivered by the tenant to the landlord.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

History: **En. Sec. 16, Ch. 267, L. 2007; amd. Sec. 2, Ch. 220, L. 2017.**

Part 3
Rights and Duties of Parties

70-33-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on a landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section must be kept current and in writing, and this section is enforceable against any successor landlord, owner, or manager.

(3) A person, other than the landlord, who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under this chapter and under the rental agreement and for expending or making available for the purpose of performing those obligations all rent collected from the premises.

History: **En. Sec. 17, Ch. 267, L. 2007.**

70-33-302. Landlord to deliver possession of premises. (1) At the commencement of the rental term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-33-303. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

History: **En. Sec. 18, Ch. 267, L. 2007.**

70-33-303. Landlord to maintain premises — agreement that tenant perform duties. (1) A landlord shall:

(a) comply with the requirements of applicable building, housing, and health department codes materially affecting health and safety at the time of original construction;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition except when it is the tenant's responsibility to maintain the dwelling unit pursuant to 70-33-321;

(c) keep all common areas of the premises in a clean and safe condition;

(d) for the premises, maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(e) unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the lot and arrange for their removal; and

(f) supply running water at all times unless the lot is not required by law to be equipped for that purpose or the running water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant may agree in writing that the tenant is to perform the landlord's duties specified in subsections (1)(e) and (1)(f) but only if the agreement is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants.

History: En. Sec. 19, Ch. 267, L. 2007; amd. Sec. 12, Ch. 536, L. 2021.

70-33-304. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys premises subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. The landlord remains liable to the tenant for all security recoverable by the tenant pursuant to Title 70, chapter 25, and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the manager's management duties.

History: En. Sec. 20, Ch. 267, L. 2007.

70-33-305. Transfer of premises by tenant. (1) A tenant who vacates a lot during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

History: En. Sec. 21, Ch. 267, L. 2007.

70-33-306 through 70-33-310 reserved.

70-33-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or may not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of the rule at the time that the tenant enters into the rental agreement or when the rule is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that involves a substantial modification of the rental agreement, it is not valid until after 30 days' written notice in the case of month-to-month tenancies.

History: En. Sec. 22, Ch. 267, L. 2007.

70-33-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter the lot in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the lot to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) A landlord may enter the lot without consent of the tenant in case of emergency.

(3) (a) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(b) For the purposes of this subsection (3), in addition to the provisions of 70-33-106, a tenant has notice of the intent to enter if the landlord conspicuously posts the landlord's intent to enter on the main entry door of the dwelling unit.

(4) A landlord has no other right of access except:

(a) pursuant to a court order;

(b) as permitted by 70-33-425 and 70-33-426(1)(b); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter.

History: En. Sec. 23, Ch. 267, L. 2007; amd. Sec. 13, Ch. 536, L. 2021.

70-33-313. Lot rules. (1) A landlord may adopt a rule concerning the rental occupancy of a lot and the use of common areas and facilities in accordance with 70-33-311. A rule may not be unreasonable, and a rule that does not apply uniformly to all tenants of a similar class creates a rebuttable presumption, as defined in 70-33-431(3), that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

History: En. Sec. 24, Ch. 267, L. 2007.

70-33-314. Resident associations — meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenants' resident association. The landlord may not interfere with or prevent the attendance of an invitee at a resident association's meeting.

(2) The landlord may not prohibit meetings by a resident association or tenants relating to:

(a) mobile home living; or

(b) the future plans for the mobile home park, including sale or change of use.

History: En. Sec. 25, Ch. 267, L. 2007; amd. Sec. 1, Ch. 211, L. 2009.

70-33-315. Road maintenance obligations. In addition to the obligations imposed by 70-33-303, the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

History: En. Sec. 26, Ch. 267, L. 2007.

70-33-316 through 70-33-320 reserved.

70-33-321. Tenant to maintain lot. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose of all ashes, garbage, rubbish, and other waste from the lot in a clean and safe manner;

(d) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(e) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(f) use the parts of the premises in a reasonable manner considering the purposes for which they were designed and intended.

(2) This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(3) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(4) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;
(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132;
(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4;
(d) unlawful possession of a firearm, explosive, or hazardous or toxic substance; or
(e) any activity that is otherwise prohibited by law.

History: En. Sec. 27, Ch. 267, L. 2007; amd. Sec. 14, Ch. 536, L. 2021.

70-33-322. Notice of extended absence. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days not later than the first day of the extended absence.

History: En. Sec. 28, Ch. 267, L. 2007.

Part 4
Remedies

70-33-401. Administration of remedies — enforcement — agreement. (1) The remedies provided by this chapter must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages. The aggrieved party may include a reasonable charge for the party's labor.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect. Nothing in this chapter prohibits the assignment of a right or the claim of a right by either landlord or tenant. The landlord's or tenant's defenses and obligations may not be affected by an assignment.

(3) Rules and regulations that are not a part of this chapter and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

(4) A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

History: En. Sec. 29, Ch. 267, L. 2007; amd. Sec. 15, Ch. 536, L. 2021.

70-33-402. Prohibited provisions — damages. (1) A provision prohibited by 70-33-202 that is included in a rental agreement is unenforceable.

(2) If one party purposefully uses a rental agreement containing provisions known by that party to be prohibited, the other party may recover, in addition to actual damages, an amount up to 3 months' rent.

History: En. Sec. 30, Ch. 267, L. 2007.

70-33-403. Unconscionability — court discretion. (1) Except as provided in subsection (2), if the court, as a matter of law, finds that:

(a) a rental agreement or any provision of the rental agreement is unconscionable, the court, in order to avoid an unconscionable result, may refuse to enforce the agreement or may enforce the remainder of the agreement without the unconscionable provision result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court, in order to avoid an unconscionable result, may refuse to enforce the settlement, may enforce the remainder of the settlement without the unconscionable provision, or may limit the application of any unconscionable provision.

(2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental agreement that:

(a) a tenant maintain a lot in accordance with 70-33-321; or

(b) a landlord maintain the premises in accordance with 70-33-303.

(3) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making its determination.

History: En. Sec. 31, Ch. 267, L. 2007; amd. Sec. 4, Ch. 236, L. 2021.

70-33-404. Landlord's failure to deliver premises — tenant's remedies. (1) If the landlord fails to deliver possession of the lot to the tenant as provided in 70-33-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the lot against the landlord or a person wrongfully in possession and recover the actual damages sustained by the tenant.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount of not more than 3 months' rent or treble damages, whichever is greater.

History: En. Sec. 32, Ch. 267, L. 2007.

70-33-405. Landlord's failure to maintain premises — tenant's remedies. (1) Unless otherwise provided in this chapter, if there is a noncompliance with 70-33-303 affecting health and safety, the following procedures apply:

(a) The tenant may deliver a written notice to the landlord specifying the nature of the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate the rental agreement for a condition caused by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent.

(b) (i) The tenant may make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(ii) If the landlord fails to comply with the rental agreement or 70-33-303 and the reasonable cost of compliance is less than 1 month's rent, the tenant may recover damages for the breach under subsection (2).

(2) Unless otherwise provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-33-303.

(3) The remedy provided in subsection (2) is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to Title 70, chapter 25.

History: **En. Sec. 33, Ch. 267, L. 2007.**

70-33-406. Landlord's failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or 70-33-303 the landlord purposefully or negligently fails to supply running water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct the actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the lot; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) A tenant proceeding under this section may not proceed under 70-33-405 for a landlord's failure to provide essential services.

(3) The rights of a tenant under this section do not arise until the tenant has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions.

(4) A tenant does not have rights under this section if the conditions were caused by the act or omission of the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent.

History: **En. Sec. 34, Ch. 267, L. 2007.**

70-33-407. Fire or casualty damage — rights and obligations of tenant. (1) (a) If the lot or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the lot is substantially impaired, the tenant may immediately vacate the premises and notify the landlord in writing within 14 days of vacating the premises that it is the tenant's intention to terminate the rental agreement.

(b) If the tenant complies with the provisions of subsection (1)(a), the rental agreement terminates as of the date the tenant vacates the premises.

(2) If the rental agreement is terminated pursuant to subsection (1), the landlord shall return any prepaid rent and all security recoverable pursuant to Title 70, chapter 25. Accounting or apportionment for rent in the event of termination must be made as of the date of the fire or casualty.

(3) If the tenant's mobile home is damaged or destroyed by fire or casualty to an extent that enjoyment of the mobile home is substantially impaired and 70-33-430 does not apply, it is the obligation of the mobile home owner to remove the mobile home from the lot within 30 days of the damage or destruction.

(4) All terms and conditions of the rental agreement remain in effect until the mobile home is removed from the premises and all required cleanup is completed.

History: **En. Sec. 35, Ch. 267, L. 2007.**

70-33-408. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise lawful but has the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

History: **En. Sec. 36, Ch. 267, L. 2007.**

70-33-409. Unlawful ouster, exclusion, or diminution of services — tenant's remedies. (1) If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount of not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to Title 70, chapter 25, and any prepaid rent.

History: En. Sec. 37, Ch. 267, L. 2007.

70-33-410. Action for nonpayment of rent — tenant's counterclaim. (1) (a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount recoverable under the rental agreement or this chapter.

(b) (i) The court may order the tenant to pay into court all or part of the rent accrued and afterwards accruing, and the court shall determine the amount due to each party.

(ii) A party to whom a net amount is owed must be paid first from the money paid into court, and the balance must be paid by the other party.

(iii) The court may at any time release money paid into the court to any party if the parties agree or if the court finds a party is entitled to the money.

(c) If there is no rent remaining due after application of this section, judgment must be entered for the tenant in an action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) but may not be required to pay any rent into court.

History: En. Sec. 38, Ch. 267, L. 2007.

70-33-411 through 70-33-421 reserved.

70-33-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-33-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-33-321(3). If the landlord terminates the rental agreement, the tenant shall vacate the premises on termination of the agreement.

(2) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested or charged with an act that violates the provisions of 70-33-321(4), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-33-321(4). If the landlord terminates the rental agreement, the tenant shall vacate the premises on termination of the agreement.

(3) Except as otherwise provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-33-321. Except as provided in subsection (4) of this section, if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(4) Treble damages may not be recovered for the tenant's early termination of the tenancy.

History: En. Sec. 39, Ch. 267, L. 2007; amd. Sec. 5, Ch. 236, L. 2021.

70-33-423. Waiver of landlord's right to termination. (1) Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent.

(2) Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right.

(3) The acceptance of partial payment of rent due does not constitute a waiver of any right, including rent due.

History: En. Sec. 40, Ch. 267, L. 2007; amd. Sec. 6, Ch. 236, L. 2021.

70-33-424. Refusal of access — landlord's remedies. (1) If the tenant refuses to allow lawful access, the landlord may issue a 24-hour notice to correct or obtain immediate injunctive relief to compel access. In either case, the landlord may recover actual damages. If the 24-hour notice to correct is not remedied, the landlord may issue a 3-day notice to terminate the rental agreement.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by 70-33-312(5), the landlord may issue a 24-hour notice to correct or obtain immediate injunctive relief. If the 24-hour notice to correct is not remedied, the landlord may issue a 3-day notice to terminate the rental agreement.

History: En. Sec. 41, Ch. 267, L. 2007; amd. Sec. 4, Ch. 715, L. 2023.

70-33-425. Tenant's failure to maintain lot — landlord's right to enter and repair. If there is noncompliance by the tenant with 70-33-321 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy the breach within that period of time, the landlord may enter the lot and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value of the work as rent on the next date rent is due or, if the rental agreement has terminated, for immediate payment.

History: En. Sec. 42, Ch. 267, L. 2007.

70-33-426. Remedies for absence or abandonment. (1) (a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-33-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(b) During an absence of the tenant in excess of 7 days, the landlord may enter the lot when reasonably necessary.

(2) (a) If the tenant abandons the lot, the landlord shall make reasonable efforts to rent the lot at a fair rental. If the landlord rents the lot for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the new tenancy.

(b) If the landlord fails to use reasonable efforts to rent the lot at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment.

(c) If the tenancy is from month to month or week to week, the term of the rental agreement for the purposes of this subsection (2) is a month or a week, as appropriate.

History: En. Sec. 43, Ch. 267, L. 2007.

70-33-427. Landlord's remedies after termination — action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession, rent, and actual damages for any breach of the rental agreement.

(2) (a) Except as provided in subsection (2)(c), an action filed pursuant to subsection (1) in a court must be heard within 10 business days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under 70-33-321(4), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.

(b) If the action is appealed to the district court, the hearing must be held within 10 business days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under 70-33-321(4), the hearing must be held within 5 business days after the case is transmitted to district court.

(c) A hearing for damages for any breach of the rental agreement must be held within 45 days after the claim of possessions and rent has been adjudicated.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ of possession immediately.

History: En. Sec. 44, Ch. 267, L. 2007; amd. Sec. 4, Ch. 454, L. 2015; amd. Sec. 5, Ch. 715, L. 2023.

70-33-428. Landlord's recovery of possession limited. Except in the case of abandonment or surrender or as permitted in this chapter, a landlord may not recover or take possession of the lot by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services.

History: **En. Sec. 45, Ch. 267, L. 2007.**

70-33-429. Holdover remedies — consent to continued occupancy. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or other termination of the rental agreement, the landlord may bring an action for possession.

(2) If the term is longer than month-to month and the landlord terminates the agreement with cause and the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount of not more than 3 months' rent or treble damages, whichever is greater.

(3) If the term of the rental is month-to-month and the landlord terminates the rental agreement without cause and issues a lawful 30-day notice and the tenant remains in the rental unit after the termination date, then the holdover is purposeful and the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(4) In an action for possession or unlawful holdover, the provisions of the Montana Justice and City Court Rules of Civil Procedure, Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 5 business days after service of summons and complaint, exclusive of the date of service.

(5) If the landlord consents to the tenant's continued occupancy, 70-33-201(2)(e) applies.

History: **En. Sec. 46, Ch. 267, L. 2007; amd. Sec. 6, Ch. 715, L. 2023.**

70-33-430. Disposition of abandoned personal property. (1) (a) If a tenancy terminates by court order, the personal property is considered abandoned and the landlord may immediately dispose of the personal property as allowed by law.

(b) If a tenancy terminates in any manner other than by court order, if the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises, and if at least 48 hours have elapsed since the occurrence of the events upon which the landlord has based the belief of abandonment, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant and each known party having a lien or encumbrance of record, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) (a) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned.

(b) If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed to a landlord who stores the property, and actual storage costs are allowed to a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and, subject to any prior security interest of record, any delinquent rent or damages owing on the premises. The landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county.

(9) The landlord shall ensure that the terms of this section are included in plain and understandable language as a notification upon termination of the lease or rental agreement.

History: **En. Sec. 47, Ch. 267, L. 2007; amd. Sec. 16, Ch. 536, L. 2021.**

70-33-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-33-303; or

(c) has organized or become a member of a tenant's union, mobile home park resident association, or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-33-409 and has a defense in any retaliatory action against the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this subsection, "rebuttable presumption" means that the trier of fact is required to find the existence of the fact presumed unless evidence is introduced that would support a finding of its nonexistence.

(4) Subsections (1) through (3) do not prevent a landlord from bringing an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the lot.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-33-404(2).

History: **En. Sec. 48, Ch. 267, L. 2007.**

70-33-432. Disposition of abandoned mobile home. (1) If a tenancy terminates, if the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home lot, and if at least 5 days have elapsed since the occurrence of events upon which the landlord has formed the belief that the mobile home has been abandoned, the landlord may remove the mobile home from the premises or keep the mobile home stored on the premises.

(2) If the landlord does not keep the mobile home stored on the premises, the landlord shall store the mobile home in a place of safekeeping and in either case shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner reasonable removal and storage charges.

(3) Regardless of where the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity the landlord determines has an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home.

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from where it is stored and does not do so within 20 days after delivery of the owner's response, the mobile home may be conclusively presumed to be abandoned. A landlord is entitled to payment of the removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord has a lien on the mobile home and the proceeds of a sale conducted pursuant to subsection (6) for the reasonable costs of removal, storage, notice, sale, or delinquent rent or damages owing on the premises. The sale proceeds are subject to any prior security interest of record. A writing or recording is not necessary to create the lien provided for in this section. In the case of a sheriff's sale, the sheriff shall conduct the sale upon receipt of an affidavit from the landlord stating facts sufficient to warrant a sale under this section. After satisfaction of the lien, the landlord shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county.

History: En. Sec. 49, Ch. 267, L. 2007.

70-33-433. Grounds for termination of rental agreement. (1) If there is a noncompliance by the tenant with the rental agreement or with a provision of 70-33-321, the landlord may deliver a written notice to the tenant pursuant to 70-33-106 specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon the date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 days;

(b) a violation of a rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 14 days;

(c) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 24 hours;

(d) late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for termination for the final late payment is 30 days;

(e) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 6-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of 70-33-321(1) within a 6-month period, for which the notice period for the final violation is 14 days;

(h) any violation of 70-33-321(3), for which the notice period is as provided in 70-33-422(1);

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 7 days;

(j) any other noncompliance or violation not covered by subsections (1)(a) through (1)(i) that endangers other tenants or mobile home park personnel or the landlord or manager or causes substantial damage to the premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other tenants or the landlord or manager or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1) if the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the premises from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the premises.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner and any tenant of the mobile home owner whose identity and address have been provided to the landlord written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

History: En. Sec. 50, Ch. 267, L. 2007; amd. Sec. 17, Ch. 536, L. 2021.

70-33-434. Attorney fees — costs. In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

History: En. Sec. 51, Ch. 267, L. 2007.

(e) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 6-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of 70-33-321(1) within a 6-month period, for which the notice period for the final violation is 14 days;

(h) any violation of 70-33-321(3), for which the notice period is as provided in 70-33-422(1);

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 7 days;

(j) any other noncompliance or violation not covered by subsections (1)(a) through (1)(i) that endangers other tenants or mobile home park personnel or the landlord or manager or causes substantial damage to the premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other tenants or the landlord or manager or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1) if the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the premises from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the premises.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner and any tenant of the mobile home owner whose identity and address have been provided to the landlord written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

History: En. Sec. 50, Ch. 267, L. 2007; amd. Sec. 17, Ch. 536, L. 2021.

70-33-434. Attorney fees — costs. In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

History: En. Sec. 51, Ch. 267, L. 2007.

TITLE 71

MORTGAGES, PLEDGES, AND LIENS

Ch.
1. Mortgages.
2. Pledges.
3. Liens.

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MORTGAGES

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Part 1
General Provisions

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Montana Title Insurance Act, Title 33, ch. 25.

71-1-101. Definition. "Mortgage" is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

History: En. Sec. 3810, Civ. C. 1895; re-en. Sec. 5731, Rev. C. 1907; re-en. Sec. 8246, R.C.M. 1921; Cal. Civ. C. Sec. 2920; Field Civ. C. Sec. 1608; re-en. Sec. 8246, R.C.M. 1935; R.C.M. 1947, 52-101.

Cross-References

"Mortgage" used in reference to security interest in personal property to include security interest under U.C.C., 1-1-205.

Security interest defined, 30-1-201.

71-1-102. Power of attorney to execute. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

History: En. Sec. 3822, Civ. C. 1895; re-en. Sec. 5743, Rev. C. 1907; re-en. Sec. 8258, R.C.M. 1921; Cal. Civ. C. Sec. 2933; re-en. Sec. 8258, R.C.M. 1935; R.C.M. 1947, 52-113.

Cross-References

Discharge or release by other than mortgagee, 71-1-213.
Powers of attorney, Title 72, ch. 5, part 5.

71-1-103. Mortgage a special lien — on what a lien. (1) The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

(2) A mortgage is a lien upon everything that would pass by a grant of the property.

History: (1)En. Sec. 3812, Civ. C. 1895; re-en. Sec. 5733, Rev. C. 1907; re-en. Sec. 8248, R.C.M. 1921; Cal. Civ. C. Sec. 2923; Field Civ. C. Sec. 1609; re-en. Sec. 8248, R.C.M. 1935; Sec. 52-103, R.C.M. 1947; (2)En. Sec. 3815, Civ. C. 1895; re-en. Sec. 5736, Rev. C. 1907; re-en. Sec. 8251, R.C.M. 1921; Cal. Civ. C. Sec. 2926; Based on Field Civ. C. Sec. 1617; re-en. Sec. 8251, R.C.M. 1935; Sec. 52-106, R.C.M. 1947; R.C.M. 1947, 52-103, 52-106.

Cross-References

Liens, Title 71, ch. 3.

71-1-104. Mortgage not a personal obligation. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security unless there is an express covenant therein to that effect.

History: En. Sec. 3817, Civ. C. 1895; re-en. Sec. 5738, Rev. C. 1907; re-en. Sec. 8253, R.C.M. 1921; Cal. Civ. C. Sec. 2928; re-en. Sec. 8253, R.C.M. 1935; R.C.M. 1947, 52-108.

Cross-References
Defendants personally liable — foreclosure proceedings, 71-1-222.

71-1-105. Mortgagee not entitled to possession. A mortgage does not entitle the mortgagee to the possession of the property unless authorized by the express terms of the mortgage, but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

History: En. Sec. 3816, Civ. C. 1895; re-en. Sec. 5737, Rev. C. 1907; re-en. Sec. 8252, R.C.M. 1921; Cal. Civ. C. Sec. 2927; Based on Field Civ. C. Sec. 1620; re-en. Sec. 8252, R.C.M. 1935; R.C.M. 1947, 52-107.

71-1-106. Waste prohibited. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

History: En. Sec. 3818, Civ. C. 1895; re-en. Sec. 5739, Rev. C. 1907; re-en. Sec. 8254, R.C.M. 1921; Cal. Civ. C. Sec. 2929; re-en. Sec. 8254, R.C.M. 1935; R.C.M. 1947, 52-109.

Cross-References
Injunction to prevent injury to property, 71-1-227.

71-1-107. Transfers of interest. (1) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.

(2) The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

History: (1)En. Sec. 3813, Civ. C. 1895; re-en. Sec. 5734, Rev. C. 1907; re-en. Sec. 8249, R.C.M. 1921; Cal. Civ. C. Sec. 2924; Based on Field Civ. C. Sec. 1610; re-en. Sec. 8249, R.C.M. 1935; Sec. 52-104, R.C.M. 1947; (2) En. Sec. 3814, Civ. C. 1895; re-en. Sec. 5735, Rev. C. 1907; re-en. Sec. 8250, R.C.M. 1921; Cal. Civ. C. Sec. 2925; Field Civ. C. Sec. 1612; re-en. Sec. 8250, R.C.M. 1935; Sec. 52-105, R.C.M. 1947; R.C.M. 1947, 52-104, 52-105.

71-1-108. Subsequently acquired title. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

History: En. Sec. 3819, Civ. C. 1895; re-en. Sec. 5740, Rev. C. 1907; re-en. Sec. 8255, R.C.M. 1921; Cal. Civ. C. Sec. 2930; re-en. Sec. 8255, R.C.M. 1935; R.C.M. 1947, 52-110.

71-1-109. Mortgage of property adversely held. A mortgage may be created upon property held adversely to the mortgagor.

History: En. Sec. 3811, Civ. C. 1895; re-en. Sec. 5732, Rev. C. 1907; re-en. Sec. 8247, R.C.M. 1921; Cal. Civ. C. Sec. 2921; Field Civ. C. Sec. 1614; re-en. Sec. 8247, R.C.M. 1935; R.C.M. 1947, 52-102.

71-1-110. Passage of mortgage by assignment of debt. The assignment of a debt secured by mortgage carries with it the security.

History: En. Sec. 3825, Civ. C. 1895; re-en. Sec. 5746, Rev. C. 1907; re-en. Sec. 8261, R.C.M. 1921; Cal. Civ. C. Sec. 2936; re-en. Sec. 8261, R.C.M. 1935; R.C.M. 1947, 52-115.

71-1-111. Power of sale. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

History: En. Sec. 3821, Civ. C. 1895; re-en. Sec. 5742, Rev. C. 1907; re-en. Sec. 8257, R.C.M. 1921; Cal. Civ. C. Sec. 2932; Field Civ. C. Sec. 1615; re-en. Sec. 8257, R.C.M. 1935; R.C.M. 1947, 52-112.

Cross-References
Power of sale, 71-1-223.

71-1-112. Applicable laws. (1) In the event of conflict between any provision of this part and the Uniform Commercial Code, the latter shall govern.

(2) All mortgages and deeds of trust covering both real and personal property executed by a corporation, association, or partnership or by an individual or individuals are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned and by the Uniform Commercial Code—Secured Transactions so far as the personal property is concerned.

History: (1)En. 52-117 by Sec. 11-133, Ch. 264, L. 1963; Sec. 52-117, R.C.M. 1947; (2)En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; re-en. Sec. 8273, R.C.M. 1935; amd. Sec. 11-134, Ch. 264, L. 1963; Sec. 52-212, R.C.M. 1947; R.C.M. 1947, 52-117, 52-212.

Cross-References
Uniform Commercial Code, Title 30, ch. 1 through 9A.

71-1-113. Limit on the amount of funds on reserve. Except as provided in 71-1-114, if a lending institution requires a borrower under a mortgage or trust indenture of real property to include in the borrower's regular payment additional payment into a reserve fund held by the lending institution for the future payment of property taxes, insurance premiums, and other expenses, the amount of funds on reserve may not exceed 110% of the projected amount needed to pay those expenses.

History: En. Sec. 1, Ch. 490, L. 1979; amd. Sec. 2238, Ch. 56, L. 2009.

71-1-114. Exception to limitation. If the borrower desires, the lending institution and borrower may enter into a written contract in which they agree that the funds on reserve exceed 110% of the reasonable amount needed to pay such expenses.

History: En. Sec. 2, Ch. 490, L. 1979.

71-1-115. Record of reserve fund required. Every lending institution shall keep an itemized record of each payment entered into the reserve fund and each disbursement withdrawn from the reserve fund. The lending institution shall annually mail a statement of total receipts and disbursements to each borrower under a mortgage or trust indenture of real property.

History: En. Sec. 3, Ch. 490, L. 1979.

Part 2
Mortgages of Real Property

Part Cross-References
Montana Title Insurance Act, Title 33, ch. 25.

71-1-201. What real property may be mortgaged — debts secured. Any interest in real property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage, and to secure advances then in contemplation but to be made in the future.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

71-1-202. Mortgage not considered conveyance — recovery of possession. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. When the mortgage confers a power of sale, as mentioned in 71-1-111, possession may be recovered according to the terms of the mortgage.

History: En. Sec. 239, p. 93, Bannack Stat.; re-en. Sec. 260, p. 188, L. 1867; re-en. Sec. 309, p. 95, Cod. Stat. 1871; re-en. Sec. 359, p. 139, L. 1877; re-en. Sec. 359, 1st Div. Rev. Stat. 1879; re-en. Sec. 371, 1st Div. Comp. Stat. 1887; amd. Sec. 1316, C. Civ. Proc. 1895; re-en. Sec. 6877, Rev. C. 1907; re-en. Sec. 9495, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 744; re-en. Sec. 9495, R.C.M. 1935; R.C.M. 1947, 93-6219.

Cross-References
Definition of foreclosure, 71-1-221.
Possession of lands prior to foreclosure upon default and during period of redemption, 71-1-229.

71-1-203. Writing required. A mortgage of real property can be created, renewed, or extended only by writing, with the formalities required in the case of a grant of real property.

History: En. Sec. 3842, Civ. C. 1895; re-en. Sec. 5749, Rev. C. 1907; re-en. Sec. 8264, R.C.M. 1921; Cal. Civ. C. Sec. 2922; Field Civ. C. Sec. 1623; re-en. Sec. re-en. Sec. 8264, R.C.M. 1935; R.C.M. 1947, 52-203.

Cross-References
What contracts must be in writing, 28-2-903.
Transfer of property grants and their interpretation, Title 70, ch. 1, part 5.
Transfer of real property to be in writing — statute of frauds, 70-20-101.
Recording transfers of real property, Title 70, ch. 21.
Recording of mortgages and assignments, 71-1-207.
Period of mortgage — renewal, 71-1-210.

71-1-204. Form of mortgage. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the .... day of ...., in the year ...., by A.B., of ...., mortgagor, to C.D., of ...., mortgagee:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to the mortgagor of .... dollars, on (or before) the .... day of ...., in the year ...., with interest on that amount (or as security for the payment of an obligation, describing it, etc.).

....

A.B."

History: En. Sec. 3841, Civ. C. 1895; re-en. Sec. 5748, Rev. C. 1907; re-en. Sec. 8263, R.C.M. 1921; Cal. Civ. C. Sec. 2948; re-en. Sec. 8263, R.C.M. 1935; R.C.M. 1947, 52-202; amd. Sec. 2239, Ch. 56, L. 2009.

71-1-205. Priorities. Any lien entitled to actual priority over the lien of mortgage by force of any express provision of the laws of this state shall continue to have priority to the extent prescribed by law.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

Cross-References

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Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority in general, 71-3-113.
Priority of purchase money mortgage, 71-3-114.
Priority — farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — loggers' liens, 71-3-602.
Priority — liens for seed or grain, 71-3-702.
Priority — threshers' liens, 71-3-804.
Priority — crop or grain liens for spraying or dusting, 71-3-904.
Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

71-1-206. Future advances. (1) The amount of future advances or total indebtedness that may be outstanding at any given time and subject to mortgage protection must be stated in the mortgage. The mortgagee may reserve the right, at the mortgagee's option, to refuse to make all or any part of a future advance. The total amount of indebtedness that may be secured by the mortgage may decrease or increase from time to time, but the total principal amount of the obligations secured at any one time may not exceed the face amount stated in the mortgage together with interest as provided in the instrument secured by the mortgage.

(2) The lien for the stated amount of future advances or total indebtedness shall, notwithstanding the fact that from time to time during the term of the mortgage no indebtedness is due from the mortgagor to the mortgagee, have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage. The lien extends to interest as provided in the instrument secured by the mortgage.

(3) The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto, and the principal amount of the original indebtedness and the limit placed on contemplated future advances, if allowed. Upon the recording of such written notice by the mortgagor in the county and counties where the mortgage is recorded, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges as evidenced by the original loan-contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. The mortgagor retains the right to demand satisfaction of the mortgage at any time the balance is zero.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part); amd. Sec. 1, Ch. 351, L. 1985.

71-1-207. Recording of mortgages and assignments. (1) Mortgages of real property may be acknowledged or proved, certified, and recorded in the same manner and with the same effect as grants of real property.

(2) An assignment of a real estate mortgage may be recorded in the same manner as a real estate mortgage, and the record operates as legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons, including subsequent purchasers, encumbrancers, mortgagees, or other lienholders. An assignment must contain the assignee's post-office address at the assignee's place of residence and may not be recorded or filed unless it contains the post-office address.

History: (1)En. Sec. 3844, Civ. C. 1895; re-en. Sec. 5751, Rev. C. 1907; re-en. Sec. 8266, R.C.M. 1921; Cal. Civ. C. Sec. 2952; re-en. Sec. 8266, R.C.M. 1935; Sec. 52-205, R.C.M. 1947; (2)En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R.C.M. 1921; Cal. Civ. C. Sec. 2934; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; re-en. Sec. 8259, R.C.M. 1935; amd. Sec. 11-131, Ch. 264, L. 1963; Sec. 52-114, R.C.M. 1947; R.C.M. 1947, 52-114, 52-205; amd. Sec. 2240, Ch. 56, L. 2009.

Cross-References

Indexes to recorded documents, 7-4-2619.
Assignments generally, 31-2-210.
Recording transfers of real property, Title 70, ch. 21, part 2.
Recording of mortgages, 70-21-202.
Writing required, 71-1-203.

71-1-208. Recording of subordination or waiver agreements. A subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers, or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved.

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963; R.C.M. 1947, 52-116.

71-1-209. Recording defeasance necessary to affect grant. When a grant of real property purports to be an absolute conveyance but is intended to be defeasible on the performance of certain conditions, the grant is not defeated or affected as against any person other than the grantee or the grantee's heirs or devisees or persons having actual notice unless an instrument of defeasance, duly executed and acknowledged, has been recorded in the office of the county clerk of the county where the property is situated.

History: En. Sec. 3843, Civ. C. 1895; re-en. Sec. 5750, Rev. C. 1907; re-en. Sec. 8265, R.C.M. 1921; Cal. Civ. C. Sec. 2950; re-en. Sec. 8265, R.C.M. 1935; R.C.M. 1947, 52-204; amd. Sec. 2241, Ch. 56, L. 2009.

71-1-210. Period of mortgage — renewal. A mortgage of real property made, acknowledged, and recorded as provided by the laws of this state is good against all from the time it is recorded until 8 years after the maturity of the entire debt or obligation secured and no longer unless the mortgagee or the mortgagee's heirs, executors, administrators, representatives, or assigns, within 60 days after the expiration of the 8 years, file in the office of the county clerk where the mortgage is recorded an affidavit setting forth the date of the mortgage, when and where recorded, the amount of the debt secured, and the amount remaining unpaid and that the mortgage is not renewed for the purpose of hindering, delaying, or defrauding creditors of the mortgagor or owner of the land. Upon the filing of the affidavit, the mortgage is valid against all persons for an additional 8 years.

History: En. Sec. 1, Ch. 27, L. 1913; re-en. Sec. 8267, R.C.M. 1921; amd. Sec. 1, Ch. 104, L. 1933; re-en. Sec. 8267, R.C.M. 1935; R.C.M. 1947, 52-206; amd. Sec. 2242, Ch. 56, L. 2009.

Cross-References

Small tract financing — time for foreclosure same as mortgage, 71-1-311.

71-1-211. Satisfaction of mortgage — record thereof. (1) A mortgage must be discharged upon the record by the county clerk in whose custody it is recorded whenever there is presented to the clerk a certificate executed by the mortgagee or the mortgagee's personal representative or assignee, acknowledged or proved and certified as prescribed in this chapter that entitles a conveyance to be recorded, specifying that the mortgage has been paid or otherwise satisfied or discharged.

(2) Every certificate and the proof and acknowledgment must be recorded at full length, and a reference must be made to the book and page containing the record in the mortgagor and mortgagee indexes as to the discharge of the mortgage.

History: **En. Secs. 37, 38, p. 485, Bannack Stat.; re-en. Secs. 37, 38, p. 402, Cod. Stat. 1871; re-en. Secs. 214, 215, 5th Div. Rev. Stat. 1879; re-en. Secs. 272, 273, 5th Div. Comp. Stat. 1887; re-en. Secs. 3846, 3847, Civ. C. 1895; re-en. Secs. 5753, 5754, Rev. C. 1907; re-en. Secs. 8269, 8270, R.C.M. 1921; Cal. Civ. C. Secs. 2939, 2940; re-en. Secs. 8269, 8270, R.C.M. 1935; R.C.M. 1947, 52-208, 52-209; amd. Sec. 1, Ch. 127, L. 1981; amd. Sec. 2243, Ch. 56, L. 2009.**

71-1-212. Penalties for failure to give certificate of discharge or release after full performance. After the full performance of the conditions of a mortgage and whether before or after a breach of the mortgage, a mortgagee or the personal representative or assignee of the mortgagee who refuses or neglects to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release of the mortgage within 90 days after a request for one is liable to the mortgagor or the mortgagor's heirs or assigns in the sum of $500 and all actual damages resulting from the neglect or refusal.

History: **En. Sec. 39, p. 486, Bannack Stat.; re-en. Sec. 39, p. 402, Cod. Stat. 1871; re-en. Sec. 216, 5th Div. Rev. Stat. 1879; re-en. Sec. 274, 5th Div. Comp. Stat. 1887; re-en. Sec. 3748, Civ. C. 1895; re-en. Sec. 5755, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1921; re-en. Sec. 8271, R.C.M. 1921; Cal. Civ. C. Sec. 2941; re-en. Sec. 8271, R.C.M. 1935; R.C.M. 1947, 52-210(part); amd. Sec. 1, Ch. 30, L. 2001; amd. Sec. 96, Ch. 2, L. 2009.**

71-1-213. Discharge or release by other than mortgagee. (1) If a discharge or release is made by the personal representative of the mortgagee, it must be accompanied by a certified copy of the personal representative's authority unless the authority is already recorded in the office of the county clerk and recorder where the mortgage is recorded.

(2) If the discharge or release is made by an assignee, it must be accompanied by the assignment of the mortgage unless the assignment is already recorded in the office of the county clerk and recorder where the mortgage is recorded.

(3) If the discharge or release is executed by an attorney-in-fact, the discharge or release must have attached to it the power of attorney under which it is made unless the power of attorney is already recorded in the office of the county clerk and recorder where the mortgage is recorded.

(4) If the discharge or release is executed by the heir or heirs of the mortgagee, the discharge or release must be accompanied by a certified copy of an order or decree of a court of competent jurisdiction showing the authority unless the order or decree is already recorded in the office of the county clerk and recorder where the mortgage is recorded.

(5) Foreign administrators and executors may discharge or release mortgages of record in Montana if the discharge or release of mortgages is accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the letters have not been revoked and are in full force. The certificate and certified copy of letters must be recorded with the discharge or release of the mortgage. When presented and recorded, the discharge or release has the same effect as if the mortgage was discharged or released by the mortgagee.

History: **En. Sec. 39, p. 486, Bannack Stat.; re-en. Sec. 39, p. 402, Cod. Stat. 1871; re-en. Sec. 216, 5th Div. Rev. Stat. 1879; re-en. Sec. 274, 5th Div. Comp. Stat. 1887; re-en. Sec. 3748, Civ. C. 1895; re-en. Sec. 5755, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1921; re-en. Sec. 8271, R.C.M. 1921; Cal. Civ. C. Sec. 2941; re-en. Sec. 8271, R.C.M. 1935; R.C.M. 1947, 52-210(part); amd. Sec. 1, Ch. 11, L. 1979; amd. Sec. 2244, Ch. 56, L. 2009.**

Cross-References

Power of attorney to execute, 71-1-102.

71-1-214 through 71-1-220 reserved.

71-1-221. Definition of foreclosure. The term "foreclosure" for the purpose of this part shall include sale or possession of real property made or taken whether by judicial proceedings or otherwise.

History: **En. Sec. 2, Ch. 2, L. 1935; re-en. Sec. 9473.2, R.C.M. 1935; R.C.M. 1947, 93-6009.**

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

Mortgage not considered conveyance — recovery of possession, 71-1-202.

Possession of lands prior to foreclosure upon default and during period of redemption, 71-1-229.

71-1-222. Proceedings in foreclosure suits. (1) There is only one action for the recovery of debt or the enforcement of any right secured by a mortgage upon real estate, and that action must be in accordance with the provisions of this part. In the action, the court may, by its judgment, direct:

(a) a sale of the encumbered property or as much of the property as may be necessary;

(b) the application of the proceeds of the sale, including the payment of property taxes due at the time of foreclosure; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for the balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of the judgment debtor, as in other cases on which execution may be issued.

(3) A person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien on the property, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, does not have to be made a party to the action. The judgment and the proceedings are as conclusive against the party holding the unrecorded conveyance or lien as if the holding party had been made a party to the action.

(4) The one-action limitation in this section does not prohibit an act or proceeding:

(a) to appoint a receiver for or obtain possession of real or personal property collateral for the debt or other obligation;

(b) to enforce a security interest in or the assignment of any rents, issues, profits, or other income of any real or personal property;

(c) to enforce a mortgage or other lien on real or personal property collateral located outside this state that is security for the same debt or other right secured by real property in this state;

(d) to secure a judgment outside this state on a debt or other right secured by real property in this state and by real or personal property collateral located outside this state;

(e) for the exercise of a power of sale conferred pursuant to the provisions of 71-1-223 or a foreclosure by advertisement and sale pursuant to Title 71, chapter 1, part 3;

(f) for the exercise of a right or remedy under the Montana Uniform Commercial Code, except securing a judgment on a secured debt, including a deficiency judgment on a secured debt, in a court in Montana;

(g) for the exercise of a right or remedy under the uniform commercial code of another state;

(h) for claim and delivery of personal property pursuant to the provisions of Title 27, chapter 17;

(i) for the exercise of a right to set off a deposit or share account, to enforce a pledge in a deposit or share account pursuant to a written agreement or pledge, or to enforce a financial institution's statutory lien;

(j) to draw under a letter of credit;

(k) for the recovery of damages arising from the commission of a tort or the recovery of any declaratory or equitable relief;

(l) to collect a debt or enforce a right or obligation secured by a junior mortgage or other junior lien on real property if the property has been sold to satisfy, in whole or in part, a debt or other right or obligation secured by a senior mortgage or other senior lien on the property;

(m) concerning a mortgage securing a debt or right guaranteed, to enforce an agreement with a surety or guarantor of the debt or right secured by a mortgage on real estate, if the surety or guaranty obligation is not secured by the same mortgage;

(n) relating to a proceeding in bankruptcy, including filing a proof of claim, to seek relief from an automatic stay and any other action to determine the amount or validity of a debt or right or obligation secured by a mortgage;

(o) for filing a claim or to enforce a claim disallowed pursuant to the Montana Uniform Probate Code;

(p) that does not include collection of the debt or realization of the collateral securing the debt or other obligation;

(q) that is exempted from the provisions of this section by law;

(r) to recover costs of suit, costs and expenses of sale, attorney fees, and other incidental relief in connection with any act or proceeding authorized in this subsection (4); or

(s) for recovery of a debt or for enforcement of a right secured by a mortgage when the mortgage security in this state has become valueless through no fault of the mortgagee.

History: En. Sec. 223, p. 90, Bannack Stat.; en. Sec. 246, p. 185, L. 1867; re-en. Sec. 295, p. 92, Cod. Stat. 1871; re-en. Sec. 346, p. 135, L. 1877; re-en. Sec. 346, 1st Div. Rev. Stat. 1879; re-en. Sec. 358, 1st Div. Comp. Stat. 1887; amd. Sec. 1290, C. Civ. Proc. 1895; re-en. Sec. 6861, Rev. C. 1907; re-en. Sec. 9467, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 726; re-en. Sec. 9467, R.C.M. 1935; amd. Sec. 11-166, Ch. 264, L. 1963; R.C.M. 1947, 93-6001; amd. Sec. 3, Ch. 80, L. 1993; amd. Sec. 1, Ch. 349, L. 1999.

Cross-References

Mortgage not personal obligation, 71-1-104.
Deficiency judgment not allowed on foreclosure of purchase price mortgage, 71-1-232.
Attorney fee on foreclosure, 71-1-233.

71-1-223. Power of sale. When a real estate mortgage confers a power of sale, either upon the mortgagee or any other person, to be executed after a breach of the obligation for which the mortgage is a security, either an action may be maintained under this part to foreclose or proceedings may be had under the provisions of the mortgage.

History: En. Sec. 1293, C. Civ. Proc. 1895; re-en. Sec. 6864, Rev. C. 1907; re-en. Sec. 9470, R.C.M. 1921; re-en. Sec. 9470, R.C.M. 1935; amd. Sec. 11-167, Ch. 264, L. 1963; R.C.M. 1947, 93-6004.

Cross-References

Power of sale conferred by mortgage, 71-1-111.

71-1-224. Sale — notice. Real estate sold under a power of sale given and contained in a mortgage of real estate, except in a trust indenture as defined in the Small Tract Financing Act of Montana, shall be advertised for sale at least 30 days before the date fixed for such sale, in a newspaper in the county in which such real estate is situated, and in case there is no newspaper printed and published in said county, then by posting notices in at least five conspicuous places in said county, one of which notices must be posted on the land so advertised for sale. Two other notices must be posted in conspicuous places in the township in which said land is situated, one in such conspicuous place in said county as will be most likely to give notice to all persons interested in said sale, and one of said notices must be posted in a conspicuous place at the front door of the county courthouse of the county in which said land is located, and in addition to the publication or posting, as hereinbefore provided, notices of such sale must be served personally at least 30 days before the date fixed for such sale upon the occupant of the property so advertised for sale and upon the mortgagor if within the state of Montana and upon every person or persons having or claiming an interest of record in the real estate so advertised for sale who may be found within the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1917; re-en. Sec. 9471, R.C.M. 1921; re-en. Sec. 9471, R.C.M. 1935; amd. Sec. 18, Ch. 177, L. 1963; R.C.M. 1947, 93-6005.

Cross-References

Right of redemption, 71-1-228.
Petition for attorney fee — notice, 71-1-234.
Small Tract Financing Act of Montana, Title 71, ch. 1, part 3.

71-1-225. Surplus money from sale. If there be surplus money remaining after the payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it and in the meantime may direct it to be deposited in court.

History: En. Sec. 247, p. 186, L. 1867; re-en. Sec. 296, p. 92, Cod. Stat. 1871; re-en. Sec. 347, p. 136, L. 1877; re-en. Sec. 347, 1st Div. Rev. Stat. 1879; re-en. Sec. 359, 1st Div. Comp. Stat. 1887; re-en. Sec. 1291, C. Civ. Proc. 1895; re-en. Sec. 6862, Rev. C. 1907; re-en. Sec. 9468, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 727; re-en. Sec. 9468, R.C.M. 1935; R.C.M. 1947, 93-6002.

71-1-226. Proceedings when debt secured falls due at different times. If the debt for which the mortgage, lien, or encumbrance is held is not all due, as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterward, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

History: En. Sec. 248, p. 186, L. 1867; re-en. Sec. 297, p. 92, Cod. Stat. 1871; re-en. Sec. 348, p. 136, L. 1877; re-en. Sec. 348, 1st Div. Rev. Stat. 1879; re-en. Sec. 360, 1st Div. Comp. Stat. 1887; re-en. Sec. 1292, C. Civ. Proc. 1895; re-en. Sec. 6863, Rev. C. 1907; re-en. Sec. 9469, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 728; re-en. Sec. 9469, R.C.M. 1935; R.C.M. 1947, 93-6003.

Cross-References

Waste prohibited, 71-1-106.

71-1-227. Injunction to prevent injury to property. The court may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon.

History: En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).

Cross-References

Waste prohibited, 71-1-106.

71-1-228. Rights of redemption applicable. All of the rights, powers, and privileges concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution shall be granted and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except to sales of real estate under and by virtue of the power of sale conferred upon a trustee under a trust indenture as defined in the Small Tract Financing Act of Montana.

History: En. Sec. 2, Ch. 165, L. 1917; re-en. Sec. 9472, R.C.M. 1921; re-en. Sec. 9472, R.C.M. 1935; amd. Sec. 19, Ch. 177, L. 1963; R.C.M. 1947, 93-6006.

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

71-1-229. Possession of land prior to foreclosure upon default and during period of redemption. The purchaser of land at mortgage foreclosure is not entitled to the possession of the land as against the execution debtor during the period of redemption allowed by law while the execution debtor personally occupies the land as a home for the execution debtor and the debtor's family. It is unlawful to insert in any mortgage of real estate any provision intended to constitute a waiver by the owner of real estate personally occupying land as a home for the owner and the owner's family of the provision of this section or any provision intended to give the mortgagee possession of the land or premises prior to foreclosure upon default of tax, principal, or interest payments. The intention of this section is to ensure to the owner the possession of the land prior to foreclosure and during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part); amd. Sec. 2, Ch. 11, L. 1979; amd. Sec. 2245, Ch. 56, L. 2009.

Cross-References

Mortgage not considered conveyance — recovery of possession, 71-1-202.
Definition of foreclosure, 71-1-221.

71-1-230. Action to redeem mortgage. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under the mortgagor against the mortgagee in possession or those claiming under the mortgagee unless the mortgagee in possession or those claiming under the mortgagee have continuously maintained an adverse possession of the mortgaged premises for 10 years after breach of some condition of the mortgage.

History: En. Sec. 521, C. Civ. Proc. 1895; re-en. Sec. 6454, Rev. C. 1907; re-en. Sec. 9044, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 346; re-en. Sec. 9044, R.C.M. 1935; R.C.M. 1947, 93-2616; amd. Sec. 2246, Ch. 56, L. 2009.

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.
Mortgagee not entitled to possession, 71-1-105.

71-1-231. Redemption by multiple mortgagors. If there is more than one mortgagor or more than one person claiming under a mortgagor, some of whom are not entitled to maintain an action under the provisions of 71-1-230 or Title 27, chapter 2, any one of them who is entitled to maintain an action may redeem in the action a divided or undivided part of the mortgaged premises as the person's interest appears, and have an accounting for a part of the rents and profits proportionate to the person's interest in the mortgaged premises on payment of a part of the mortgage money bearing the same proportion to the whole of the money as the value of person's divided or undivided interest in the premises bears to the whole of the premises.

History: En. Sec. 522, C. Civ. Proc. 1895; re-en. Sec. 6455, Rev. C. 1907; re-en. Sec. 9045, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 347; re-en. Sec. 9045, R.C.M. 1935; R.C.M. 1947, 93-2617; amd. Sec. 2247, Ch. 56, L. 2009.

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

Proceedings when debt secured falls due at different times, 71-1-226.

71-1-232. Deficiency judgment not allowed on foreclosure of purchase price mortgage. Upon the foreclosure of any mortgage, executed to any vendor of real property or to the vendor's heirs, executors, administrators, or assigns for the balance of the purchase price of the real property, the mortgagee is not entitled to a deficiency judgment on account of the mortgage or note or obligation secured by the mortgage.

History: En. Sec. 1, Ch. 2, L. 1935; re-en. Sec. 9473.1, R.C.M. 1935; R.C.M. 1947, 93-6008; amd. Sec. 2248, Ch. 56, L. 2009.

Cross-References

Proceedings in foreclosure suits, 71-1-222.

Deficiency judgment not allowed under Small Tract Financing Act of Montana, 71-1-317.

Priority of purchase money mortgage, 71-3-114.

71-1-233. Attorney's fee on foreclosure. In an action to foreclose a mortgage of real property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, any stipulation in the instrument or any agreement between the parties to the contrary notwithstanding.

History: En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).

Cross-References

Inclusion of attorney fees in bill of costs, 25-10-302.

Proceedings in foreclosure suits, 71-1-222.

71-1-234. Attorney fee — petition and notice. If the mortgagee demands attorney fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the Small Tract Financing Act of Montana, the mortgagee shall petition the district court of the county in which the real estate or any part of the real estate is situated to fix the amount of the attorney fees. A copy of the petition must be served upon all parties having or claiming an interest of record in the property to be sold or those parties that may be found within the state, at least 10 days before the day fixed for hearing. Notice of the time and place of the hearing must be served at the same time as the copy of the petition is served. A petition must be acted upon by the district court before the notice of sale by publication or posting, as provided for in this part, is given.

History: En. Sec. 3, Ch. 165, L. 1917; re-en. Sec. 9473, R.C.M. 1921; re-en. Sec. 9473, R.C.M. 1935; amd. Sec. 20, Ch. 177, L. 1963; R.C.M. 1947, 93-6007; amd. Sec. 2249, Ch. 56, L. 2009.

71-1-235. Instruments — negotiability and remedies. Nothing in this part shall be deemed to affect the negotiability of an instrument, and nothing in this part shall be deemed to limit remedies otherwise available to the purchaser of a promissory note secured by a mortgage unless such purchaser at the time of purchase had notice that the note was so secured.

History: En. 93-6010 by Sec. 11-168, Ch. 264, L. 1963; R.C.M. 1947, 93-6010.

Cross-References

When promise or order unconditional, 30-3-105.

Part 3
Small Tract Financing

71-1-301. Short title. This part may be cited as the "Small Tract Financing Act of Montana".

History: En. Sec. 1, Ch. 177, L. 1963; R.C.M. 1947, 52-401.

71-1-302. Policy. Because the financing of homes and business expansion is essential to the development of the state of Montana and because financing of homes and business expansion, usually involving areas of real estate of not more than 40 acres, has been restricted by the laws relating to mortgages of real property and because more financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than 40 acres as provided in this part.

History: **En. Sec. 2, Ch. 177, L. 1963; amd. Sec. 1, Ch. 337, L. 1974; R.C.M. 1947, 52-402; amd. Sec. 1, Ch. 114, L. 1989; amd. Sec. 2, Ch. 30, L. 2001.**

71-1-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or the person's successor in interest, who may not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Servicer" means a person who collects loan payments on behalf of a beneficiary.

(4) (a) "Title insurance producer" means a person who holds a valid title insurance producer's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) Title insurance producer does not include an approved attorney.

(5) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer authorized to transact title insurance in this state.

(6) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(7) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or the person's successor in interest.

History: **En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974; R.C.M. 1947, 52-403(part); amd. Sec. 2, Ch. 114, L. 1989; amd. Sec. 3, Ch. 30, L. 2001; amd. Sec. 1, Ch. 413, L. 2005.**

71-1-304. Trust indentures authorized — power of sale for breach in trustee. (1) A transfer in trust of an interest in real property of an area not exceeding 40 acres may be made to secure the performance of an obligation of a grantor or any other person named in the indenture to a beneficiary. However, a trust indenture may not be substituted for a mortgage that was in existence on March 5, 1963.

(2) When a transfer in trust of an interest in real property is made to secure the performance of the obligation referred to in subsection (1), a power of sale is conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

(3) A trust indenture executed in conformity with this part may be foreclosed by advertisement and sale in the manner provided in this part or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision in the trust indenture.

(4) If a trust indenture states that the real property involved does not exceed 40 acres, the statement is binding upon all parties and conclusive as to compliance with the provisions of this part relative to the power to make a transfer, trust, and power of sale.

History: **(1) thru (3)En. Sec. 4, Ch. 177, L. 1963; amd. Sec. 3, Ch. 337, L. 1974; Sec. 52-404, R.C.M. 1947; (4) En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974; Sec. 52-403, R.C.M. 1947; R.C.M. 1947, 52-403(part), 52-404; amd. Sec. 3, Ch. 114, L. 1989; amd. Sec. 4, Ch. 30, L. 2001.**

71-1-305. Trust indenture considered to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this part, in which event the provisions of this part shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: **En. Sec. 17, Ch. 177, L. 1963; R.C.M. 1947, 52-417.**

71-1-306. Qualifications of trustee — successor trustee. (1) The trustee of a trust indenture under this part must be:

(a) an attorney who is licensed to practice law in Montana;

(b) a bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) a title insurer or title insurance producer or agency authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record, in the office of the clerk and recorder of each county in which the trust property or some part of the trust property is situated, a substitution of trustee. The substitution must identify the trust indenture by stating the names of the original parties to the trust indenture and the date of recordation and the book and page where the information is recorded, must state the name and mailing address of the new trustee, and must be executed and acknowledged by all of the beneficiaries designated in the trust indenture or their successors in interest. From the time the substitution is filed for record, the new trustee is vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963; R.C.M. 1947, 52-405; amd. Sec. 1, Ch. 33, L. 1987; amd. Sec. 91, Ch. 51, L. 1999.

Cross-References

Trust Code, Title 72, ch. 38.

71-1-307. Reconveyance upon performance — liability for failure to reconvey. (1) Upon performance of the obligation secured by the trust indenture, the trustee, upon written request of the beneficiary or servicer, shall reconvey the interest in real property described in the trust indenture to the grantor. If the obligation is performed and the beneficiary or servicer refuses to request reconveyance or the trustee refuses to reconvey the property within 90 days of the request, the beneficiary, servicer, or trustee who refuses is liable to the grantor for the sum of $500 and all actual damages resulting from the refusal to reconvey.

(2) If a beneficiary or servicer has received a notice of intent to reconvey pursuant to 71-1-308 and has not timely requested a reconveyance or has not objected to the reconveyance within the 90-day period established in 71-1-308, the beneficiary or servicer is liable to the title insurer or title insurance producer for the sum of $500 and all damages resulting from the failure.

(3) In an action by a grantor, title insurer, or title insurance producer to collect any sums due under this section, the court shall award attorney fees and costs to the prevailing party.

History: En. Sec. 6, Ch. 177, L. 1963; R.C.M. 1947, 52-406; amd. Sec. 5, Ch. 413, L. 2005.

Cross-References

Penalties for failure to give certificate of discharge or release after full performance, 71-1-212.

71-1-308. Reconveyance of trust indenture — forms — objections to reconveyance. (1) A title insurer or title insurance producer may reconvey a trust indenture in accordance with the provisions of this section if:

(a) the obligation secured by the trust indenture has been fully paid by the title insurer or title insurance producer; or

(b) the obligation secured by the trust indenture was fully paid by a former title insurer, title insurance producer, or predecessor of the title insurer or title insurance producer.

(2) A title insurer or title insurance producer may reconvey a trust indenture regardless of whether the title insurer or title insurance producer is named as a trustee under a trust indenture.

(3) At the time that the obligation secured by the trust indenture is paid in full, or at any time after payment, the title insurer or title insurance producer shall deliver by certified mail a notice of intent to reconvey and a copy of the reconveyance to be recorded to the beneficiary or servicer at:

(a) the address specified in the trust indenture;

(b) any address for the beneficiary or servicer specified in the last-recorded assignment of the trust indenture;

(c) any address for the beneficiary or servicer specified in a request for notice recorded under 71-1-314; or

(d) the address shown on any payoff statement received by the title insurer or title insurance producer from the beneficiary or servicer.

(4) (a) The notice of intent to reconvey must contain the name of the beneficiary and the servicer if loan payments on the trust indenture are collected by a servicer, the name of the title insurer or title insurance producer, and the date that the notice is signed.

(b) The notice must be substantially in the following form:

"NOTICE OF INTENT TO RECONVEY

NOTICE IS HEREBY GIVEN TO YOU AS FOLLOWS:

1. THIS NOTICE CONCERNS THE (TRUST INDENTURE) DESCRIBED AS FOLLOWS:
(GRANTOR):....................................
(BENEFICIARY):...
RECORDING INFORMATION:..................................
DOCUMENT NUMBER:......................................
BOOK NUMBER:...
PAGE NUMBER:...

2. THE UNDERSIGNED CLAIMS TO HAVE PAID IN FULL OR POSSESSES SATISFACTORY EVIDENCE OF THE FULL PAYMENT OF THE OBLIGATION SECURED BY THE TRUST INDENTURE DESCRIBED ABOVE.

3. THE UNDERSIGNED WILL FULLY RECONVEY THE TRUST INDENTURE DESCRIBED IN THIS NOTICE WITHIN 90 DAYS FROM THE DATE STATED ON THIS NOTICE UNLESS:

(A) A RECONVEYANCE OF THE TRUST INDENTURE HAS BEEN RECORDED; OR

(B) THE UNDERSIGNED HAS RECEIVED BY CERTIFIED MAIL A NOTICE STATING THAT THE OBLIGATION SECURED BY THE TRUST INDENTURE HAS NOT BEEN PAID IN FULL OR THAT YOU OTHERWISE OBJECT TO THE RECONVEYANCE OF THE TRUST DEED. NOTICE MUST BE MAILED TO THE ADDRESS STATED ON THIS FORM.

(C) PURSUANT TO 71-1-307, MCA, A BENEFICIARY OR SERVICER MAY BE LIABLE FOR DAMAGES, COSTS, AND PENALTIES FOR FAILING TO RECONVEY A TRUST INDENTURE WITHIN 90 DAYS OF THE DATE STATED IN THIS NOTICE IF THE OBLIGATION SECURED BY THE TRUST INDENTURE HAS BEEN FULLY PAID PRIOR TO THE DELIVERY OF THIS NOTICE.

4. A COPY OF THE RECONVEYANCE OF TRUST INDENTURE IS ENCLOSED WITH THIS NOTICE.

....
(SIGNATURE OF TITLE INSURER OR TITLE INSURANCE PRODUCER)

....
(ADDRESS OF TITLE INSURER OR TITLE INSURANCE PRODUCER)"

(5) (a) If, within 90 days from the day on which the title insurer or title insurance producer delivers the notice of intent to reconvey, the beneficiary or servicer does not send by certified mail to the title insurer or title insurance producer a notice that the obligation secured by the trust indenture has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust indenture, the title insurer or title insurance producer may execute, acknowledge, and record a reconveyance of a trust indenture.

(b) A reconveyance of a trust indenture must be in substantially the following form:

"RECONVEYANCE OF TRUST INDENTURE

(Name of title insurer or title insurance producer) authorized to conduct business in this state reconveys, without warranty, the following trust property located in (name of county), state of Montana, that is covered by a trust indenture naming (name of grantor) as grantor, and (name of beneficiary) as beneficiary that was recorded on (date) in book .... at page .... as document number ....: (insert a description of the trust property.)

The undersigned title insurer or title insurance producer certifies as follows:

1. The undersigned title insurer or title insurance producer has fully paid the obligation secured by the trust indenture or possesses satisfactory evidence of the full payment of the obligation secured by the trust indenture.

2. As required by 71-1-308, the title insurer or title insurance producer delivered to the beneficiary or servicer a notice of intent to reconvey and a copy of the reconveyance.

3. The trust indenture has not been reconveyed and the title insurer or title insurance producer did not receive, within 90 days from the day on which the title insurer or title insurance producer delivered the notice of intent to reconvey to the beneficiary or servicer, a notice from the beneficiary or servicer, sent by certified mail, that the obligation secured by the trust indenture has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust indenture.

....

(Notarization) (Signature of title insurer or title insurance producer)"

(c) (i) A reconveyance of trust indenture executed and notarized in accordance with subsection (5)(b) may be recorded.

(ii) Except as provided in subsection (5)(c)(iii), a reconveyance of a trust indenture that is recorded in compliance with subsection (5)(c)(i) is valid regardless of any deficiency in the reconveyance procedure not disclosed in the reconveyance of trust indenture.

(iii) If the title insurer's or title insurance producer's signature on a reconveyance of trust recorded under subsection (5)(c)(i) is forged, the release of mortgage or reconveyance of trust is void.

(6) A reconveyance of trust indenture pursuant to the provisions of this section does not, by itself, discharge any promissory note or other obligation that was secured by the trust indenture at the time that the trust indenture was reconveyed.

History: En. Sec. 2, Ch. 413, L. 2005.

71-1-309. Objection to reconveyance. A title insurer or title insurance producer may not record a reconveyance of trust indenture if, within 90 days of the date of the notice of intent to reconvey, the beneficiary or servicer notifies the title insurer or title insurance producer that the obligation has not been paid in full or that the beneficiary or servicer objects to the reconveyance.

History: En. Sec. 3, Ch. 413, L. 2005.

71-1-310. Liability of title insurer or title insurance producer. A title insurer or title insurance producer who reconveys a trust indenture is liable to the beneficiary for damages suffered by the beneficiary as a result of the reconveyance if:

(1) the obligation secured by the trust indenture is not fully paid;

(2) the title insurer or title insurance producer failed to comply with the provisions of 71-1-308; or

(3) the title insurer or title insurance producer acted with gross negligence or in bad faith in reconveying the trust indenture.

History: En. Sec. 4, Ch. 413, L. 2005.

71-1-311. Time for foreclosure same as mortgage. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963; R.C.M. 1947, 52-407.

Cross-References

Period of mortgage — renewal, 71-1-210.

71-1-312. Discontinuance of foreclosure proceedings when entire amount of default paid. (1) Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in the obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal or by reason of failure of the grantor to pay, in accordance with the terms of the trust indenture, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with the terms of the obligation or of the trust indenture, the grantor or the grantor's successor in interest in the trust property or any part of the trust property or any other person having a subordinate lien or encumbrance of record on the trust property or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or the beneficiary's successor in interest the entire amount then due under the terms of the trust indenture and the obligation secured by the indenture, including costs and expenses actually incurred and reasonable trustee's fees and attorney fees, other than the portion of the principal that would not then be due if a default had not occurred and cure the existing default.

(2) Upon the payment described in subsection (1), all prior proceedings had or instituted to foreclose the trust indenture must be canceled and the obligation and the trust indenture must be reinstated and remain in force and effect the same as if an acceleration had not occurred.

(3) If the default is cured and the obligation and the trust indenture reinstated in the manner provided, the beneficiary or the beneficiary's assignee shall, on demand of any person having an interest in the trust property, execute, acknowledge, and deliver to the person a request that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of sale under the trust indenture.

(4) Any beneficiary under a trust indenture or the beneficiary's assignee who, for a period of 30 days after the demand, refuses to request the trustee to execute, acknowledge, and deliver a cancellation is liable to the person entitled to the request for all damages resulting from the refusal.

(5) A cancellation of a recorded notice of sale, when executed and acknowledged, is entitled to be recorded and is sufficient if it sets forth a reference to the trust indenture and the book and page where the indenture is recorded, a reference to the notice of sale and to the book and page where the indenture is recorded, and a statement that the notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963; R.C.M. 1947, 52-412; amd. Sec. 2250, Ch. 56, L. 2009.

71-1-313. *(Temporary)* **Conditions for foreclosure by advertisement and sale.** The trustee may foreclose a trust indenture by advertisement and sale under this part if:

(1) the trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture or some part thereof is situated;

(2) there is a default by the grantor or other person owing an obligation or by their successors in interest, the performance of which is secured by the trust indenture, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(3) the trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture or some part thereof is situated a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(b) a description of the property covered by the trust indenture;

(c) the book and page of the mortgage records where the trust indenture is recorded;

(d) the default for which the foreclosure is made;

(e) the sum owing on the obligation secured by the trust indenture;

(f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;

(g) the date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9 a.m. and 4 p.m., mountain standard time;

(h) the place of sale which shall be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

71-1-313. *(Effective on occurrence of contingency)* **Conditions for foreclosure by advertisement and sale.** The trustee may foreclose a trust indenture by advertisement and sale under this part if:

(1) the trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture or some part thereof is situated;

(2) there is a default by the grantor or other person owing an obligation or by their successors in interest, the performance of which is secured by the trust indenture, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(3) the trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture or some part thereof is situated a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(b) a description of the property covered by the trust indenture;

(c) the book and page of the mortgage records where the trust indenture is recorded;

(d) the default for which the foreclosure is made;

(e) the sum owing on the obligation secured by the trust indenture;

(f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;

(g) the date of sale, which must not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which must be between the hours of 9 a.m. and 4 p.m., mountain daylight time; and

(h) the place of sale, which must be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

History: En. Sec. 8, Ch. 177, L. 1963; R.C.M. 1947, 52-408(1); amd. Sec. 3, Ch. 447, L. 2021.

Compiler's Comments

Contingent Effective Date: Section 6, Ch. 447, L. 2021, provided: "(1) [This act] is effective on the first Sunday of November following the day that the governor certifies to the code commissioner that:

(a) not fewer than four western states, including Montana, pass legislation to place all or a portion of those states on year-round daylight saving time, regardless of the time zone; and

(b) (i) legislation enacted by congress goes into effect to amend 15 U.S.C. 260a to authorize states to observe daylight saving time year-round; or

(ii) the United States department of transportation, pursuant to the department authority in 15 U.S.C. 260, et seq., approves the state's transfer from mountain standard time to central standard time.

(2) As used in this section, "western states" means the states of Idaho, Montana, North Dakota, South Dakota, Utah, and Wyoming."

71-1-314. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in 71-1-315(1) may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross-reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963; R.C.M. 1947, 52-415.

71-1-315. Notice — sale — payment. A trust deed may be foreclosed by advertisement and sale in the following manner:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale must be mailed by certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or if the grantor's address is not set forth in the trust indenture at the grantor's last-known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth in the trust indenture, at that address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner provided in this section, at the address of the person as set forth in the request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at that address;

(v) any person who has a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at that address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale must be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale must be posted by a sheriff or constable of the county in which the property to be sold is located.

(c) A copy of the notice of sale must be published in a newspaper of general circulation published in any county in which the property or some part of the property is situated, at least once each week for 3 successive weeks. If there is no newspaper of general circulation published in the county, then copies of the notice of sale must be posted in at least three public places in each county in which the property or some part of the property is situated. The posting or the last publication must be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there must be recorded in the office of the clerk and recorder of each county where the property or some part of the property is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or the trustee's attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause the person considers expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given. If a sale cannot be held at the scheduled time by reason of the automatic stay provision of the United States Bankruptcy Code, 11 U.S.C. 362, or of a stay order issued by any court of competent jurisdiction, the person making the sale may, as often as the person considers expedient, postpone the sale. Each postponement may not exceed 30 days, and all postponements, in the aggregate, may not exceed 120 days. Each postponement must be effected by a public proclamation at the time and place fixed in the notice of sale or fixed by previous postponement. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. If the purchaser refuses to pay the purchase price, the person conducting the sale has the right to resell the property at any time to the highest bidder. The party refusing to pay is liable for any loss occasioned by the refusal, and the person making the sale may also reject any other bid of the refusing person.

History: Ap. p. Sec. 8, Ch. 177, L. 1963; Sec. 52-408, R.C.M. 1947; (1) thru (4)En. Sec. 9, Ch. 177, L. 1963; amd. Sec. 1, Ch. 53, L. 1977; Sec. 52-409, R.C.M. 1947; R.C.M. 1947, 52-408(2), 52-409; amd. Sec. 1, Ch. 55, L. 1983; amd. Sec. 1, Ch. 212, L. 1991; amd. Sec. 2251, Ch. 56, L. 2009.

71-1-316. Disposition of proceeds of sale — notice — surplus funds — attorney fees. (1) (a) The trustee shall apply the proceeds of the trustee's sale as follows:

(i) to the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney fees;

(ii) to the obligation secured by the trust indenture that is the subject of the sale.

(b) Any surplus funds must be deposited with the clerk and recorder of the county in which the sale took place, along with written notice of the amount of the surplus funds and a copy of the notice of the trustee's sale. The trustee shall mail copies of the notice of the surplus funds, the notice of the trustee's sale, and the affidavit of mailing required under 71-1-315(2) to each party who was sent notice under 71-1-315.

(2) Upon the deposit of the surplus funds, the trustee is discharged from all further responsibility for the surplus funds. The clerk and recorder shall deposit the surplus funds with the county treasurer.

(3) (a) A party seeking disbursement of the surplus funds shall file a petition to request an order for disbursement in the district court for the county in which the surplus funds are deposited. The district court shall determine the order of priority of any interests in or liens or claims of liens against the surplus and shall issue a written order directing the county treasurer to disburse the surplus funds in accordance with the order.

(b) A party with an interest, lien, or claim that was junior to the interest that was the subject of the sale has an interest in the surplus funds in the same order of priority that existed in the property at the time of the sale.

(c) Not less than 20 days prior to the hearing, notice of the petition must be served upon any party who was sent notice of the surplus funds under subsection (1) and any other party who has entered an appearance in the proceeding.

(4) A party who is awarded any portion of the surplus funds because of an existing interest in or lien or claim of lien against the property is entitled to seek costs and attorney fees from the surplus funds. The costs and attorney fees must be allowed to each claimant whose lien is established, and the reasonable attorney fees must be allowed to the defendant against whose property a lien is claimed if a lien is not established.

History: En. Sec. 13, Ch. 177, L. 1963; R.C.M. 1947, 52-413; amd. Sec. 1, Ch. 158, L. 2007; amd. Sec. 1, Ch. 213, L. 2015.

71-1-317. Deficiency judgment not allowed. When a trust indenture executed in conformity with this part is foreclosed by advertisement and sale, other or further action, suit, or proceedings may not be taken or judgment entered for any deficiency against the grantor or the grantor's surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on the note, bond, or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963; R.C.M. 1947, 52-414; amd. Sec. 2252, Ch. 56, L. 2009.

Cross-References

Deficiency judgment not allowed on foreclosure of purchase price mortgage, 71-1-232.

71-1-318. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this part relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under 71-1-315(2) are prima facie evidence in any court of the truth of the matters set forth in the recitals, except that the recitals are conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed operates to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the grantor and the grantor's successors in interest and of all persons claiming by, through, or under them in and to the property sold, including all right, title, interest, and claim in and to the property acquired by the grantor or the grantor's successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963; R.C.M. 1947, 52-410; amd. Sec. 2253, Ch. 56, L. 2009.

71-1-319. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963; R.C.M. 1947, 52-411.

71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed the lesser of $1,000 or 1%

of the amount due on the obligation, both principal and interest, at the time of default. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: **En. Sec. 16, Ch. 177, L. 1963; R.C.M. 1947, 52-416; amd. Sec. 2, Ch. 55, L. 1983.**

71-1-321. Deeds of trust and trust deeds not invalidated. The Small Tract Financing Act of Montana does not invalidate or preclude the use in this state of instruments, sometimes denominated deeds of trust, trust deeds, or trust indentures, which are not executed in conformity with this part, but in which a conveyance for security purposes is made to a trustee or trustees for the benefit of one or more lenders. Such instruments are considered to be mortgages and are subject to all laws relating to mortgages on real property. Every such instrument, recorded as prescribed by law, from the time it is filed for record is constructive notice of its contents to subsequent purchasers and encumbrancers.

History: **En. Sec. 1, Ch. 362, L. 1979.**

CHAPTER 2
PLEDGES

Part 1 — Pledges in General

71-2-101. Definitions.
71-2-102. When contract considered a pledge.
71-2-103. Delivery required.
71-2-104. Pledgee or pledge holder for reward.
71-2-105. Gratuitous pledge holder.
71-2-106. Obligations of pledge holder.
71-2-107. Property pledged to extent of lien.
71-2-108. When pledge may not be withdrawn.
71-2-109. When real owner cannot defeat pledge.
71-2-110. Debtor's misrepresentation of value of pledge.

Chapter Cross-References

"Entrusting" under U.C.C., 30-2-403.

Part 1
Pledges in General

71-2-101. Definitions. (1) "Pledge" is a deposit of personal property by way of security for the performance of another's act.

(2) A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if the third person accepts the deposit, is called a "pledge holder".

History: **(1)En. Sec. 3890, Civ. C. 1895; re-en. Sec. 5774, Rev. C. 1907; re-en. Sec. 8292, R.C.M. 1921; Cal. Civ. C. Sec. 2986; Field Civ. C. Sec. 1647; re-en. Sec. 8292, R.C.M. 1935; Sec. 65-101, R.C.M. 1947; (2)En. Sec. 3897, Civ. C. 1895; re-en. Sec. 5781, Rev. C. 1907; re-en. Sec. 8299, R.C.M. 1921; Cal. Civ. C. Sec. 2993; Field Civ. C. Sec. 1654; re-en. Sec. 8299, R.C.M. 1935; Sec. 65-108, R.C.M. 1947; R.C.M. 1947, 65-101, 65-108; amd. Sec. 2254, Ch. 56, L. 2009.**

71-2-102. When contract considered a pledge. Every contract by which the possession of personal property is transferred as security only is to be deemed a pledge.

History: **En. Sec. 3891, Civ. C. 1895; re-en. Sec. 5775, Rev. C. 1907; re-en. Sec. 8293, R.C.M. 1921; Cal. Civ. C. Sec. 2987; Field Civ. C. Sec. 1648; re-en. Sec. 8293, R.C.M. 1935; R.C.M. 1947, 65-102.**

71-2-103. Delivery required. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee or to a pledge holder, as hereafter prescribed.

History: **En. Sec. 3892, Civ. C. 1895; re-en. Sec. 5776, Rev. C. 1907; re-en. Sec. 8294, R.C.M. 1921; Cal. Civ. C. Sec. 2988; Field Civ. C. Sec. 1649; re-en. Sec. 8294, R.C.M. 1935; R.C.M. 1947, 65-103.**

71-2-104. Pledgee or pledge holder for reward. A pledgee or a pledge holder for reward assumes the duties and liabilities of a depositary for reward.

History: **En. Sec. 3901, Civ. C. 1895; re-en. Sec. 5785, Rev. C. 1907; re-en. Sec. 8303, R.C.M. 1921; Cal. Civ. C. Sec. 2997; Field Civ. C. Sec. 1658; re-en. Sec. 8303, R.C.M. 1935; R.C.M. 1947, 65-112.**

Cross-References

Custody of thing other than money, 28-1-1224.

71-2-105. Gratuitous pledge holder. A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

History: En. Sec. 3902, Civ. C. 1895; re-en. Sec. 5786, Rev. C. 1907; re-en. Sec. 8304, R.C.M. 1921; Cal. Civ. C. Sec. 2998; Field Civ. C. Sec. 1659; re-en. Sec. 8304, R.C.M. 1935; R.C.M. 1947, 65-113.

71-2-106. Obligations of pledge holder. (1) A pledge holder for reward may not be self-exonerated from the pledge holder's undertaking. A gratuitous pledge holder may be self-exonerated only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder and, if they fail to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for that person's care of the property.

(2) A pledge holder shall enforce all the rights of the pledgee unless authorized by the pledgee to waive those rights.

History: (1)En. Sec. 3899, Civ. C. 1895; re-en. Sec. 5783, Rev. C. 1907; re-en. Sec. 8301, R.C.M. 1921; Cal. Civ. C. Sec. 2995; Field Civ. C. Sec. 1656; re-en. Sec. 8301, R.C.M. 1935; Sec. 65-110, R.C.M. 1947; (2)En. Sec. 3900, Civ. C. 1895; re-en. Sec. 5784, Rev. C. 1907; re-en. Sec. 8302, R.C.M. 1921; Cal. Civ. C. Sec. 2996; Field Civ. C. Sec. 1657; re-en. Sec. 8302, R.C.M. 1935; Sec. 65-111, R.C.M. 1947; R.C.M. 1947, 65-110, 65-111; amd. Sec. 2255, Ch. 56, L. 2009.

71-2-107. Property pledged to extent of lien. A person who has a lien upon property may pledge it to the extent of the person's lien.

History: En. Sec. 3894, Civ. C. 1895; re-en. Sec. 5778, Rev. C. 1907; re-en. Sec. 8296, R.C.M. 1921; Cal. Civ. C. Sec. 2990; Field Civ. C. Sec. 1651; re-en. Sec. 8296, R.C.M. 1935; R.C.M. 1947, 65-105; amd. Sec. 2256, Ch. 56, L. 2009.

71-2-108. When pledge may not be withdrawn. A person who pledges property as security for the obligation of another cannot withdraw the property pledged except in the manner that a personal pledgor might, and if the person receives from the debtor a consideration for the pledge, the person may not withdraw it without the debtor's consent.

History: En. Sec. 3898, Civ. C. 1895; re-en. Sec. 5782, Rev. C. 1907; re-en. Sec. 8300, R.C.M. 1921; Cal. Civ. C. Sec. 2994; Field Civ. C. Sec. 1655; re-en. Sec. 8300, R.C.M. 1935; R.C.M. 1947, 65-109; amd. Sec. 2257, Ch. 56, L. 2009.

71-2-109. When real owner cannot defeat pledge. A person who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it may not set up the person's own title to defeat a pledge of the property made by the other to a pledgee who received the property in good faith in the ordinary course of business and for value.

History: En. Sec. 3895, Civ. C. 1895; re-en. Sec. 5779, Rev. C. 1907; re-en. Sec. 8297, R.C.M. 1921; Cal. Civ. C. Sec. 2991; Field Civ. C. Sec. 1652; re-en. Sec. 8297, R.C.M. 1935; R.C.M. 1947, 65-106; amd. Sec. 2258, Ch. 56, L. 2009.

71-2-110. Debtor's misrepresentation of value of pledge. When a debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of property pledged by or for the debtor, the creditor may demand a further pledge to correspond with the value represented and in default of a further pledge may recover the debt immediately, though it is not actually due.

History: En. Sec. 3903, Civ. C. 1895; re-en. Sec. 5787, Rev. C. 1907; re-en. Sec. 8305, R.C.M. 1921; Cal. Civ. C. Sec. 2999; Field Civ. C. Sec. 1660; re-en. Sec. 8305, R.C.M. 1935; R.C.M. 1947, 65-114; amd. Sec. 2259, Ch. 56, L. 2009.

CHAPTER 3
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Part 1
General Provisions

Part Cross-References

Montana Anti-Intimidation Act of 1996, Title 27, ch. 1, part 15.

71-3-101. Definitions. For purposes of this part, the following definitions apply:

(1) A "general lien" is one which the holder of the lien is entitled to enforce as a security for the performance of all the obligations or all of a particular class of obligations that exist in the holder's favor against the owner of the property.

(2) A "lien" is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act. Liens are either general or special.

(3) A "special lien" is one that the holder of the lien can enforce only as security for the performance of a particular act or obligation and of the obligations that may be incidental to the particular act or obligation.

History: (1)Ap. p. Sec. 3730, Civ. C. 1895; re-en. Sec. 5704, Rev. C. 1907; re-en. Sec. 8219, R.C.M. 1921; Cal. Civ. C. Sec. 2872; Based on Field Civ. C. Sec. 1582; re-en. Sec. 8219, R.C.M. 1935; Sec. 45-101, R.C.M. 1947; Ap. p. Sec. 3731, Civ. C. 1895; re-en. Sec. 5705, Rev. C. 1907; re-en. Sec. 8220, R.C.M. 1921; Cal. Civ. C. Sec. 2873; Field Civ. C. Sec. 1583; re-en. Sec. 8220, R.C.M. 1935; Sec. 45-102, R.C.M. 1947; (2)En. Sec. 3732, Civ. C. 1895; re-en. Sec. 5706, Rev. C. 1907; re-en. Sec. 8221, R.C.M. 1921; Cal. Civ. C. Sec. 2874; Field Civ. C. Sec. 1584; re-en. Sec. 8221, R.C.M. 1935; Sec. 45-103, R.C.M. 1947; (3)En. Sec. 3733, Civ. C. 1895; re-en. Sec. 5707, Rev. C. 1907; re-en. Sec. 8222, R.C.M. 1921; Cal. Civ. C. Sec. 2875; Field Civ. C. Sec. 1585; re-en. Sec. 8222, R.C.M. 1935; Sec. 45-104, R.C.M. 1947; R.C.M. 1947, 45-101, 45-102, 45-103, 45-104; amd. Sec. 2260, Ch. 56, L. 2009.

Cross-References

Lien, when used in reference to security interest in personal property, to include security interest under ch. 9 of U.C.C., 1-1-205.

Judgment lien — expiration, 25-9-301.

Judgment lien for compensation — attorneys, 37-61-420.

Security interest in livestock, Title 81, ch. 8, part 3.

Financing programs of Board of Housing, 90-6-108.

71-3-102. How liens created. A lien is created:

(1) by contract of the parties; or

(2) by operation of law.

History: En. Sec. 3740, Civ. C. 1895; re-en. Sec. 5710, Rev. C. 1907; re-en. Sec. 8225, R.C.M. 1921; Cal. Civ. C. Sec. 2881; Field Civ. C. Sec. 1587; re-en. Sec. 8225, R.C.M. 1935; R.C.M. 1947, 45-107.

71-3-103. No lien for claim not due. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

History: En. Sec. 3741, Civ. C. 1895; re-en. Sec. 5711, Rev. C. 1907; re-en. Sec. 8226, R.C.M. 1921; Cal. Civ. C. Sec. 2882; Field Civ. C. Sec. 1588; re-en. Sec. 8226, R.C.M. 1935; R.C.M. 1947, 45-108.

71-3-104. Lien by agreement. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

History: En. Sec. 3743, Civ. C. 1895; re-en. Sec. 5713, Rev. C. 1907; re-en. Sec. 8228, R.C.M. 1921; Cal. Civ. C. Sec. 2884; Field Civ. C. Sec. 1590; re-en. Sec. 8228, R.C.M. 1935; R.C.M. 1947, 45-110.

71-3-105. Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

History: En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R.C.M. 1921; Cal. Civ. C. Sec. 2883; Field Civ. C. Sec. 1589; re-en. Sec. 8227, R.C.M. 1935; amd. Sec. 11-118, Ch. 264, L. 1963; R.C.M. 1947, 45-109.

Cross-References

Future advances subject to mortgage protection, 71-1-206.

71-3-106. Extent of lien. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

History: En. Sec. 3753, Civ. C. 1895; re-en. Sec. 5717, Rev. C. 1907; re-en. Sec. 8232, R.C.M. 1921; Cal. Civ. C. Sec. 2891; Field Civ. C. Sec. 1594; re-en. Sec. 8232, R.C.M. 1935; R.C.M. 1947, 45-114.

71-3-107. Prior liens. When the holder of a special lien is compelled to satisfy a prior lien for the holder's own protection, the holder may enforce payment of the amount paid as a part of the claim for which the holder's own lien exists.

History: En. Sec. 3734, Civ. C. 1895; re-en. Sec. 5708, Rev. C. 1907; re-en. Sec. 8223, R.C.M. 1921; Cal. Civ. C. Sec. 2876; re-en. Sec. 8223, R.c.M. 1935; R.C.M. 1947, 45-105; amd. Sec. 2261, Ch. 56, L. 2009.

71-3-108. Lien or contract for lien transfers no title. Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

History: En. Sec. 3750, Civ. C. 1895; re-en. Sec. 5714, Rev. C. 1907; re-en. Sec. 8229, R.C.M. 1921; Cal. Civ. C. Sec. 2888; Field Civ. C. Sec. 1591; re-en. Sec. 8229, R.C.M. 1935; R.C.M. 1947, 45-111.

71-3-109. Certain contracts void. Except as otherwise provided by the Uniform Commercial Code, all contracts for the forfeiture of property subject to a lien in satisfaction of the obligation secured thereby and all contracts in restraint of the right of redemption from a lien are void.

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R.C.M. 1921; Cal. Civ. C. Sec. 2889; Based on Field Civ. C. Sec. 1592; re-en. Sec. 8230, R.C.M. 1935; amd. Sec. 11-119, Ch. 264, L. 1963; R.C.M. 1947, 45-112.

71-3-110. Enforcement of obligation by creditor. The existence of a lien, as security for the performance of an obligation, does not affect the right of the creditor to enforce the obligation without regard to the lien.

History: En. Sec. 3754, Civ. C. 1895; re-en. Sec. 5718, Rev. C. 1907; re-en. Sec. 8233, R.C.M. 1921; Field Civ. C. Sec. 1595; re-en. Sec. 8233, R.C.M. 1935; R.C.M. 1947, 45-115.

Cross-References

Proceedings in foreclosure suits — exclusive action, 71-1-222.

71-3-111. Creation of lien not a personal obligation. The creation of a lien does not itself imply that any person is bound to perform the act for which the lien is a security.

History: En. Sec. 3752, Civ. C. 1895; re-en. Sec. 5716, Rev. C. 1907; re-en. Sec. 8231, R.C.M. 1921; Cal. Civ. C. Sec. 2890; Field Civ. C. Sec. 1593; re-en. Sec. 8231, R.C.M. 1935; R.C.M. 1947, 45-113.

71-3-112. Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code, one who holds property by virtue of a lien on the property is not entitled to compensation from the owner of the property for any trouble or expense that the person incurs respecting the property, except to the same extent as a borrower under 70-7-110 and 70-7-111.

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R.C.M. 1921; Cal. Civ. C. Sec. 2892; Field Civ. C. Sec. 1596; re-en. Sec. 8234, R.C.M. 1935; amd. Sec. 11-120, Ch. 264, L. 1963; R.C.M. 1947, 45-116; amd. Sec. 2262, Ch. 56, L. 2009.

71-3-113. Priority of liens. Other things being equal, different liens upon the same property have priority according to the time of their creation.

History: En. Sec. 3770, Civ. C. 1895; re-en. Sec. 5720, Rev. C. 1907; re-en. Sec. 8235, R.C.M. 1921; Cal. Civ. C. Sec. 2897; Based on Field Civ. C. Sec. 1597; re-en. Sec. 8235, R.C.M. 1935; R.C.M. 1947, 45-201.

Cross-References

Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority of purchase money mortgage, 71-3-114.
Priority — farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — loggers' liens, 71-3-602.
Priority — liens for seed or grain, 71-3-702.
Priority — threshers' liens, 71-3-804.
Priority — crop or grain liens for spraying or dusting, 71-3-904.
Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.
Priority — agisters' liens and liens for service, 71-3-1202.

71-3-114. Priority of purchase money mortgage. Except as otherwise provided by law, a mortgage given for the price of real property at the time of its conveyance has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

History: En. Sec. 3771, Civ. C. 1895; re-en. Sec. 5721, Rev. C. 1907; re-en. Sec. 8236, R.C.M. 1921; Cal. Civ. C. Sec. 2898; re-en. Sec. 8236, R.C.M. 1935; R.C.M. 1947, 45-202.

Cross-References

Deficiency judgment not allowed on foreclosure of purchase price mortgage, 71-1-232.

71-3-115. Order of resort to different funds. When a person has a lien upon several things and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if the prior lienor can do so without risk of personal loss or of injustice to other persons, shall resort to the property in the following order, on the demand of any interested party:

(1) to the things upon which the person has an exclusive lien;

(2) to the things that are subject to the fewest subordinate liens;

(3) in the same manner inversely to the number of subordinate liens upon the same thing; and

(4) when several things are within one of the classes described in subsections (2) and (3) and subject to the same number of liens, resort must be had:

(a) first, to the things that have not been transferred since the prior lien was created;

(b) second, to the things that have been transferred since the prior lien was created without a valuable consideration; and

(c) third, to the things that have been transferred for a valuable consideration in the inverse order of the transfer.

History: En. Sec. 3772, Civ. C. 1895; re-en. Sec. 5722, Rev. C. 1907; re-en. Sec. 8237, R.C.M. 1921; Cal. Civ. C. Sec. 2899; Based on Field Civ. C. Sec. 1599; re-en. Sec. 8237, R.C.M. 1935; R.C.M. 1947, 45-203; amd. Sec. 2263, Ch. 56, L. 2009.

71-3-116. Redemption. Redemption from a lien is made by performing or offering to perform the act for the performance of which it is a security and paying or offering to pay the damages, if any, to which the holder of the lien is entitled for delay.

History: En. Sec. 3782, Civ. C. 1895; re-en. Sec. 5725, Rev. C. 1907; re-en. Sec. 8240, R.C.M. 1921; Cal. Civ. C. Sec. 2905; Field Civ. C. Sec. 1602; re-en. Sec. 8240, R.C.M. 1935; R.C.M. 1947, 45-303.

71-3-117. Right to redeem. Except as otherwise provided by the Uniform Commercial Code, a person having an interest in property subject to a lien has a right to redeem it from the lien at any time after the claim is due and before the person's right of redemption is foreclosed.

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R.C.M. 1921; Cal. Civ. C. Sec. 2903; re-en. Sec. 8238, R.C.M. 1935; amd. Sec. 11-121, Ch. 264, L. 1963; R.C.M. 1947, 45-301; amd. Sec. 2264, Ch. 56, L. 2009.

71-3-118. Rights of inferior lienor. A person who has a lien inferior to another upon the same property has a right to:

(1) redeem the property in the same manner as its owner might from the superior lien; and

(2) be subrogated to all the benefits of the superior lien, when necessary for the protection of the person's interests, upon satisfying the claim secured by the superior lien.

History: En. Sec. 3781, Civ. C. 1895; re-en. Sec. 5724, Rev. C. 1907; re-en. Sec. 8239, R.C.M. 1921; Cal. Civ. C. Sec. 2904; Field Civ. C. Sec. 1601; re-en. Sec. 8239, R.C.M. 1935; R.C.M. 1947, 45-302; amd. Sec. 2265, Ch. 56, L. 2009.

71-3-119. Lien accessory to performance. A lien is to be accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

History: En. Sec. 3790, Civ. C. 1895; re-en. Sec. 5726, Rev. C. 1907; re-en. Sec. 8241, R.C.M. 1921; Cal. Civ. C. Sec. 2909; re-en. Sec. 8241, R.C.M. 1935; R.C.M. 1947, 45-304.

71-3-120. Effect of partial performance. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

History: En. Sec. 3793, Civ. C. 1895; re-en. Sec. 5729, Rev. C. 1907; re-en. Sec. 8244, R.C.M. 1921; Cal. Civ. C. Sec. 2912; Field Civ. C. Sec. 1606; re-en. Sec. 8244, R.C.M. 1935; R.C.M. 1947, 45-307.

71-3-121. Extinction by sale or wrongful conversion. The sale of any property on which there is a lien in satisfaction of the claim secured thereby or, in case of personal property, its wrongful conversion by the person holding the lien extinguishes the lien thereon.

History: En. Sec. 3791, Civ. C. 1895; re-en. Sec. 5727, Rev. C. 1907; re-en. Sec. 8242, R.C.M. 1921; Cal. Civ. C. Sec. 2910; Field Civ. C. Sec. 1604; re-en. Sec. 8242, R.C.M. 1935; R.C.M. 1947, 45-305.

71-3-122. Lien extinguished by statute of limitations. A lien is extinguished by the lapse of the time within which, under the provisions of Title 27, an action can be brought upon the principal obligation.

History: En. Sec. 3792, Civ. C. 1895; re-en. Sec. 5728, Rev. C. 1907; re-en. Sec. 8243, R.C.M. 1921; Cal. Civ. C. Sec. 2911; Field Civ. C. Sec. 1605; re-en. Sec. 8243, R.C.M. 1935; R.C.M. 1947, 45-306.

Cross-References

Statutes of limitations, Title 27, ch. 2.

71-3-123. When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code, the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property or a lien thereon in good faith and for a good consideration.

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R.C.M. 1921; Cal. Civ. C. Sec. 2913; Based on Field Civ. C. Sec. 1607; re-en. Sec. 8246, R.C.M. 1935; amd. Sec. 11-122, Ch. 264, L. 1963; R.C.M. 1947, 45-308.

71-3-124. Filing costs and attorney fees to be recovered on foreclosure of liens — offer of judgment. (1) In an action to foreclose any of the liens provided for in Title 71, chapter 3, part 3, 4, 5, 6, 8, 10, or 16, the court shall allow as costs the money paid and attorney fees incurred for filing and recording the lien and reasonable attorney fees in the district and supreme courts. The costs and attorney fees must be allowed to each claimant whose lien is established, and the reasonable attorney fees must be allowed to the defendant against whose property a lien is claimed if the lien is not established.

(2) In an action to foreclose any of the liens provided for in Title 71, chapter 3, part 3, 4, 5, 6, 8, 10, or 16, a defendant may make an offer of judgment as authorized in Rule 68, M.R.Civ.P. If the lienholder rejects the offer to allow judgment to be taken against the defendant and the lienholder obtains a judgment that is not more favorable than the offer, the lienholder shall, in addition to the costs allowed under Rule 68, M.R.Civ.P., pay the attorney fees incurred after the offer is made.

History: Ap. p. Sec. 1863, C. Civ. Proc. 1895; re-en. Sec. 7166, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1921; re-en. Sec. 9799, R.C.M. 1921; amd. Sec. 1, Ch. 69, L. 1925; amd. Sec. 1, Ch. 19, L. 1929; re-en. Sec. 9799, R.C.M. 1935; Sec. 93-8614, R.C.M. 1947; Ap. p. Sec. 1, Ch. 27, L. 1923; re-en. Sec. 9799.1, R.C.M. 1935; Sec. 93-8615, R.C.M. 1947; Ap. p. Sec. 1864, C. Civ. Proc. 1895; re-en. Sec. 7167, Rev. C. 1907; re-en. Sec. 9800, R.C.M. 1921; re-en. Sec. 9800, R.C.M. 1935; Sec. 93-8616, R.C.M. 1947; Ap. p. Sec. 15, p. 131, L. 1899; re-en. Sec. 5833, Rev. C. 1907; re-en. Sec. 8332, R.C.M. 1921; re-en. Sec. 8332, R.C.M. 1935; Sec. 45-415, R.C.M. 1947; Ap. p. Sec. 9, Ch. 196, L. 1935; re-en. Sec. 8374.9, R.C.M. 1935; Sec. 45-909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 17, L. 1915; re-en. Sec. 8352, R.C.M. 1921; re-en. Sec. 8352, R.C.M. 1935; Sec. 45-602, R.C.M. 1947; R.C.M. 1947, 45-415(part), 45-602, 45-909, 93-8614, 93-8615, 93-8616; amd. Sec. 1, Ch. 240, L. 1999; amd. Sec. 8, Ch. 367, L. 2009.

Cross-References

Inclusion of attorney fee in bill of cost, 25-10-302.

71-3-125. Filing of agricultural lien statements. (1) Unless a statement of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business as defined in 30-1-201(2)(i), buys a farm product takes it free of any lien created by this chapter even though the lien is otherwise perfected.

(2) A statement of an agricultural lien is sufficient if it:

(a) gives the names and addresses of the debtor and lienor;

(b) describes the type of lien and its statutory authority;

(c) describes the collateral;

(d) contains the notation by the secretary of state of the date of filing and filing number;

(e) is signed by the lienor;

(f) describes the service or product furnished. If the collateral is farm products, the statement must state the county in which the farm products are located, designated by type of farm product.

(g) states the price or wage agreed upon or, if the price or wage was not agreed upon, the reasonable value of the service or product furnished;

(h) states the amount remaining unpaid;

(i) states the terms and period of employment if it is a farm laborer's lien filed pursuant to part 4 of this chapter;

(j) describes the land upon which seed or grain was or will be sown, planted, or used if it is a lien for seed or grain filed pursuant to part 7 of this chapter;

(k) describes the land upon which the grain or crops were grown and the place the grain or crops are presently stored if it is a thresher's lien filed pursuant to part 8 of this chapter;

(l) describes the land upon which the service was performed if it is a lien for spraying or dusting filed pursuant to part 9 of this chapter; and

(m) states the starting date of insurance coverage if it is a lien filed pursuant to part 7 of this chapter.

(3) The agricultural lien statement must be in the form prescribed by the secretary of state.

(4) The secretary of state shall:

(a) record the agricultural lien statement on the centralized computer system as set forth in 30-9A-501; and

(b) establish fees for such recordings as set forth in 30-9A-525.

(5) For the purposes of this section, an agricultural lien means a lien under part 4, 7, 8, or 9 of this chapter.

(6) A statement of an agricultural lien or continuation statement that has been filed at the office of the county clerk and recorder lapses on March 31, 1990, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement and all related documents on file with the county clerk and recorder.

History: En. Sec. 1, Ch. 295, L. 1987; amd. Sec. 1, Ch. 529, L. 1989; amd. Sec. 3, Ch. 335, L. 1993; amd. Sec. 153, Ch. 305, L. 1999; amd. Sec. 89, Ch. 575, L. 2005; amd. Sec. 110, Ch. 200, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 110, Ch. 200, L. 2025. Amendment effective October 1, 2025.

71-3-126 through 71-3-130 reserved.

71-3-131. Acknowledgment of lien satisfaction — penalty. (1) Subject to subsection (2), when a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction, the creditors shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, the creditor is liable to any person injured by the failure for a civil penalty of $100, plus any other damages provided by law.

(2) If the owner of the property against which a lien is filed pays the underlying claim before an action is filed on that claim or to foreclose the lien, the owner of the property against which the lien was filed shall pay the lienholder's costs and attorney fees incurred for filing and recording the lien before the lien may be released.

History: En. Sec. 1, Ch. 525, L. 1985; amd. Sec. 2, Ch. 240, L. 1999.

Cross-References

Indexes to recorded documents, 7-4-2619.
Availability of records, 7-4-2622.
Fees of County Clerk, 7-4-2631.

Part 2
Federal Tax Liens

71-3-201. Short title. This part may be cited as the "Uniform Federal Lien Registration Act".

History: En. Sec. 6, Ch. 228, L. 1967; R.C.M. 1947, 45-1506; amd. Sec. 1, Ch. 396, L. 1983.

71-3-202. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 5, Ch. 228, L. 1967; R.C.M. 1947, 45-1505.

71-3-203. Execution of notices and certificates. Certification by the secretary of the treasury of the United States, by the secretary's delegate, or by any official or entity of the United States responsible for filing or certifying notice of any lien, notices of liens, certificates, or other notices affecting federal liens entitles them to be filed. No other attestation, certification, or acknowledgment is necessary.

History: En. Sec. 2, Ch. 228, L. 1967; R.C.M. 1947, 45-1502; amd. Sec. 2, Ch. 396, L. 1983; amd. Sec. 2266, Ch. 56, L. 2009.

71-3-204. Federal liens — place of filing. (1) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to the liens is situated.

(2) Notices of liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(a) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(b) if the person against whose interest the lien applies is a trust that is not covered by subsection (2)(a), in the office of the secretary of state;

(c) if the person against whose interest the lien applies is the estate of a decedent, in the office of the secretary of state;

(d) in all other cases, in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: En. Sec. 1, Ch. 228, L. 1967; R.C.M. 1947, 45-1501; amd. Sec. 3, Ch. 396, L. 1983.

71-3-205. Duties of filing officer. (1) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (2) is presented to the filing officer and:

(a) the filing officer is the secretary of state, the notice must be marked, held, and indexed in accordance with the provisions of 30-9A-519 as if the notice were a financing statement within the meaning of the Uniform Commercial Code; or

(b) the filing officer is any other officer described in 71-3-204, the filing officer shall endorse on the document the filing officer's identification and the date and time of receipt and file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing, the secretary of state shall:

(a) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates may not be removed from the files; and

(b) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(3) If a refiled notice of federal lien referred to in subsection (1) or any of the certificates or notices referred to in subsection (2) is presented for filing with any other filing officer specified in 71-3-204, the filing officer shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate, with the date of filing, in any alphabetical lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file, on the date and hour stated in the certificate, any notice of lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate.

History: En. Sec. 3, Ch. 228, L. 1967; R.C.M. 1947, 45-1503; amd. Sec. 4, Ch. 396, L. 1983; amd. Sec. 3, Ch. 156, L. 1987; amd. Sec. 154, Ch. 305, L. 1999.

71-3-206. Fees. (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien must be established in accordance with the provisions of 30-9A-519.

(2) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967; R.C.M. 1947, 45-1504; amd. Sec. 5, Ch. 396, L. 1983; amd. Sec. 4, Ch. 156, L. 1987; amd. Sec. 74, Ch. 83, L. 1989; amd. Sec. 21, Ch. 420, L. 1993; amd. Sec. 155, Ch. 305, L. 1999.

71-3-207. Prior filings of tax liens and notices. Filing officers with whom notices of federal tax liens, certificates, and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967", containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: En. Sec. 9, Ch. 228, L. 1967; R.C.M. 1947, 45-1507.

Part 3
Liens for Salaries and Wages

71-3-301. Priority when assignment of property made. In all assignments of property made by any person to trustees or assignees on account of the inability of the person, at the time of the assignment, to pay the person's debts or in proceedings of insolvency, the wages of the miners, mechanics, salespersons, servants, clerks, or laborers employed by the person, to the amount actually owed and for services rendered within the previous 4 months, are preferred claims and must be paid by the trustees or assignees before any other creditor of the assignor.

History: En. Sec. 2050, 5th Div. Comp. Stat. 1887; amd. Sec. 2150, C. Civ. Proc. 1895; re-en. Sec. 7302, Rev. C. 1907; re-en. Sec. 8351, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1204; re-en. Sec. 8351, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1943; R.C.M. 1947, 45-601; amd. Sec. 2267, Ch. 56, L. 2009.

Cross-References

Priority — crop or grain liens for spraying or dusting, 71-3-904.

71-3-302. Priority in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months next preceding the death of the employer, in the amount actually owed, are preferred debts under 72-3-807(1)(e) and must be paid before other claims against the estate of the deceased person.

History: En. Sec. 2051, 5th Div. Comp. Stat. 1887; re-en. Sec. 2151, C. Civ. Proc. 1895; re-en. Sec. 7303, Rev. C. 1907; re-en. Sec. 8353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1205; re-en. Sec. 8353, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1943; amd. Sec. 3, Ch. 263,L. 1975; amd. Sec. 25, Ch. 535, L. 1975; R.C.M. 1947, 45-603; amd. Sec. 131, Ch. 370, L. 1987; amd. Sec. 17, Ch. 482, L. 1997.

Cross-References

Classification of claims against estate — priority of payment, 72-3-807.

71-3-303. Priority in cases of execution or attachment. In case of executions, attachments, and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salespersons, servants, clerks, or laborers who have claims against the defendant for labor done may give notice of their claims and the amount of their claims, sworn to by the person making the claim, to the parties plaintiff and defendant to the action in which the execution, attachment, or other writ has been issued and upon the officer executing the attachment or writ. Service of notice required by this section may be made upon the officer charged with the execution of the writ in one or more cases that may be pending against the person, who shall serve a copy of the notice and claim upon the parties plaintiff and defendant if they are found in the county where the action is pending or upon their respective attorneys employed in the case or cases pending.

History: En. Sec. 2052, 5th Div. Comp. Stat. 1887; re-en. Sec. 2152, C. Civ. Proc. 1895; re-en. Sec. 7304, Rev. C. 1907; re-en. Sec. 8354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1206; re-en. Sec. 8354, R.C.M. 1935; R.C.M. 1947, 45-604; amd. Sec. 2268, Ch. 56, L. 2009.

71-3-304. Service of notice. (1) The officer serving the notice and claim described in 71-3-303 shall, after service, make return of service showing the service and where and how it was made.

(2) Service may be made in any case at any time before the actual sale of the property levied upon in the pending action, and unless the claim is disputed by the debtor or a creditor or party plaintiff, the levying officer shall pay the person out of the proceeds of the sale the amount the person is entitled to receive for services rendered within the 4 months preceding the levy of the writ, not exceeding the amount actually owed.

History: En. 2052, 5th Div. Comp. Stat. 1887; amd. Sec. 2153, C. Civ. Proc. 1895; re-en. Sec. 7305, Rev. C. 1907; re-en. Sec. 8355, R.C.M. 1921; re-en. Sec. 8355, R.C.M. 1935; amd. Sec. 3, Ch. 109, L. 1943; R.C.M. 1947, 45-605(part); amd. Sec. 2269, Ch. 56, L. 2009.

71-3-305. Proceeding if claim disputed. (1) If any or all of the claims presented and claiming preference under this part are disputed by either the debtor or a creditor, the person presenting the claim shall commence an action within 10 days after notice of the dispute is served upon the claimant, as provided in subsection (2), for the recovery of the claim. The officer shall retain possession of as much of the proceeds of the sale as may be necessary to satisfy the claim and costs until the final determination of the action. If judgment is given, the costs are a preferred claim, which may include reasonable attorney fees.

(2) The debtor or creditor intending to dispute any claim presented under the provisions of 71-3-303 shall, within 10 days after receiving notice of the claim, serve upon the claimant and officer holding the execution, attachment, or other writ a statement in writing, verified by the oath of the debtor or person disputing the claim for services, setting forth that no part of the claim, not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the 4 months preceding the levy of the execution, attachment, or other writ.

(3) If the claimant brings suit on a claim that is disputed in part only and fails to recover a sum exceeding that which was admitted to be due, the claimant may not recover costs, but costs must be adjudged against the claimant. If the claimant fails to bring suit upon a claim that is disputed in part only, the claimant is considered to have waived the disputed portion of the claim.

History: (1)En. 2052, 5th Div. Comp. Stat. 1887; amd. Sec. 2153, C. Civ. Proc. 1895; re-en. Sec. 7305, Rev. C. 1907; re-en. Sec. 8355, R.C.M. 1921; re-en. Sec. 8355, R.C.M. 1935; amd. Sec. 3, Ch. 109, L. 1943; Sec. 45-605, R.C.M. 1947; (2), (3)En. Sec. 2053, 5th Div. Comp. Stat. 1887; re-en. Sec. 2154, C. Civ. Proc. 1895; re-en. Sec. 7306, Rev. C. 1907; re-en. Sec. 8356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1207; re-en. Sec. 8356, R.C.M. 1935; amd. Sec. 4, Ch. 109, L. 1943; Sec. 45-606, R.C.M. 1947; R.C.M. 1947, 45-605(part), 45-606; amd. Sec. 2270, Ch. 56, L. 2009.

Cross-References

Form of ordinary oath, 1-6-102.

Affirmation or declaration in lieu of oath, 1-6-104.

71-3-306. Preferred claims — no dismissal of original action without consent. Persons having the preferred claims mentioned in this part are entitled to a lien upon the property attached or levied upon, and if said claims are not disputed or if a judgment is recovered for the same, the officer must pay such claims out of the property, and the original action cannot be dismissed without the consent of the owners of such preferred claims.

History: En. Sec. 2155, C. Civ. Proc. 1895; re-en. Sec. 7307, Rev. C. 1907; re-en. Sec. 8357, R.C.M. 1921; re-en. Sec. 8357, R.C.M. 1935; R.C.M. 1947, 45-607.

71-3-307. Liens not affected prior to four months of claim. Nothing in this part shall be construed so as to affect any lien, encumbrance, or mortgage held by any creditor of such employer prior to said 4 months.

History: En. Sec. 2054, 5th Div. Comp. Stat. 1887; re-en. Sec. 2156, C. Civ. Proc. 1895; re-en. Sec. 7308, Rev. C. 1907; re-en. Sec. 8358, R.C.M. 1921; re-en. Sec. 8358, R.C.M. 1935; amd. Sec. 5, Ch. 109, L. 1943; R.C.M. 1947, 45-608.

Part 4
Farm Laborers' Liens

71-3-401. Who may have lien — priority. (1) A person who performs services for another in the capacity of a farm or ranch laborer has a lien on all crops of every kind grown, raised, or harvested by the person for whom the services were performed during that time as security for the payment of any wages due or owing to the person for services performed.

(2) The lien has priority over all other liens, chattel mortgages, or encumbrances except feed sufficient for 3 months for 1 horse, 2 cows and their calves, 4 hogs, and 50 domestic fowls and seed grain and threshers' liens. The wages for which a lien may be claimed may not be in excess of $1,000 or for a period of time exceeding 60 days preceding the date of filing the lien. If a person without cause quits the employment before the expiration of the time for which the person is employed, the person is not entitled to a lien as provided in this part.

(3) If several persons have or obtain liens under the provisions of this part against property of the same employer, they have no priority among themselves but all must be paid pro rata from the proceeds of any foreclosure sale according to the provisions of this part.

History: En. Secs. 1, 4, Ch. 196, L. 1935; re-en. Secs. 8374.1, 8374.4, R.C.M. 1935; R.C.M. 1947, 45-901, 45-904; amd. Sec. 3, Ch. 11, L. 1979; amd. Sec. 2271, Ch. 56, L. 2009.

Cross-References

Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority of purchase money mortgage, 71-3-114.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — loggers' liens, 71-3-602.
Priority — liens for seed or grain, 71-3-702.
Priority — threshers' liens, 71-3-804.
Priority — crop or grain liens for spraying or dusting, 71-3-904.
Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.
Priority — agisters' liens and liens for service, 71-3-1202.

71-3-402. How lien obtained. In order to acquire a lien, as specified in 71-3-401, the person performing services shall, within 30 days after the services are fully performed, file in the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, and the address to which notice must be directed as required by 71-3-404.

History: En. Sec. 2, Ch. 196, L. 1935; re-en. Sec. 8374.2, R.C.M. 1935; R.C.M. 1947, 45-902; amd. Sec. 2, Ch. 295, L. 1987; amd. Sec. 2, Ch. 529, L. 1989.

71-3-403. Repealed. Sec. 8, Ch. 529, L. 1989.

History: En. Sec. 3, Ch. 196, L. 1935; re-en. Sec. 8374.3, R.C.M. 1935; R.C.M. 1947, 45-903; amd. Sec. 1, Ch. 172, L. 1981.

71-3-404. Notice to other lienholders. (1) A person intending to foreclose a lien secured under the provisions of this part shall give a written notice to the owner or the person against whom the lien is claimed and all chattel mortgagees, encumbrancers, and all other lienholders who appear on record in the office of the secretary of state that in not less than 10 days from the date of notice the person will institute proceedings for the foreclosure of the person's lien. Any other labor lienholder to whom notice is given may join in the foreclosure proceedings and is entitled to a pro rata share of the proceeds of the foreclosure sale as provided in this part. However, a notified labor lienholder who does not join in the proceedings is not entitled to share pro rata in the proceeds of the sale.

(2) The lien notice required by this section must be given by certified mail and directed to the last-known address of the owner or the person against whom the lien is claimed and to the addresses of the chattel mortgagees, encumbrancers, and all other lienholders as their addresses appear of record. The return of the foreclosure sale must be accompanied by proof of the giving of notice as required to be given in this section.

History: En. Sec. 5, Ch. 196, L. 1935; re-en. Sec. 8374.5, R.C.M. 1935; R.C.M. 1947, 45-905; amd. Sec. 3, Ch. 295, L. 1987; amd. Sec. 3, Ch. 529, L. 1989; amd. Sec. 2272, Ch. 56, L. 2009.

Cross-References

Filing costs and attorney fees — recovered on foreclosure of liens, 71-3-124.

71-3-405. Limitations of actions to foreclose liens. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 90 days from the filing of the lien.

History: En. Sec. 10, Ch. 196, L. 1935; re-en. Sec. 8374.10, R.C.M. 1935; R.C.M. 1947, 45-910.

71-3-406. Rules of practice. (1) Except as otherwise provided in this part, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this part.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 6, Ch. 196, L. 1935; re-en. Sec. 8374.6, R.C.M. 1935; Sec. 45-906, R.C.M. 1947; (2)En. Sec. 7, Ch. 196, L. 1935; re-en. Sec. 8374.7, R.C.M. 1935; Sec. 45-907, R.C.M. 1947; R.C.M. 1947, 45-906, 45-907.

71-3-407. Parties. All persons interested in the matter in controversy or in property charged with the lien or having liens thereon may be made parties.

History: En. Sec. 8, Ch. 196, L. 1935; re-en. Sec. 8374.8, R.C.M. 1935; R.C.M. 1947, 45-908.

71-3-408. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness that is a lien upon any of the crops subject to this part is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction of the lien and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge the lien within 30 days after being requested to do so by a person having a property interest in the crops, the lienor is liable to any person injured by the failure in the amount of the injury and costs of action.

(2) A termination statement as described in 30-9A-513 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 11, Ch. 196, L. 1935; re-en. Sec. 8374.11, R.C.M. 1935; amd. Sec. 11-126, Ch. 264, L. 1963; R.C.M. 1947, 45-911; amd. Sec. 4, Ch. 295, L. 1987; amd. Sec. 156, Ch. 305, L. 1999.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

Part 5
Construction Liens

71-3-501. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 1, p. 332, Bannack Stat.; amd. Sec. 1, p. 509, Cod. Stat. 1871; re-en. Sec. 820, 5th Div. Rev. Stat. 1879; amd. Sec. 1370, 5th Div. Comp. Stat. 1887; amd. Sec. 2130, C. Civ. Proc. 1895; re-en. Sec. 7290, Rev. C. 1907; re-en. Sec. 8339, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1183; amd. Sec. 1, Ch. 23, L. 1925; re-en. Sec. 8339, R.C.M. 1935; amd. Sec. 1, Ch. 408, L. 1971; R.C.M. 1947, 45-501.

71-3-502. Repealed. Sec. 17, Ch. 202, L. 1987.

History: (1) thru (3)En. Secs. 8 and 9, p. 334, Bannack Stat.; re-en. Secs. 8 and 9, p. 511, Cod. Stat. 1871; amd. Secs. 1 and 2, p. 238, L. 2877; re-en. Sec. 827, 5th Div. Rev. Stat. 1879; amd. Sec. 1374, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 71, Ex. L. 1887; en. Sec. 2133, C. Civ. Proc. 1895; re-en. Sec. 7293, Rev. C. 1907; re-en. Sec. 8342, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1185; re-en. Sec. 8342, R.C.M. 1935; Sec. 45-504, R.C.M. 1947; (4)En. Sec. 10, p. 334, Bannack Stat.; re-en. Sec. 10, p. 511, Cod. Stat. 1871; amd. Sec. 3, p. 238, L. 1877; amd. Sec. 829, 5th Div. Rev. Stat. 1879; amd. Sec. 1376, 5th Div. Comp. Stat. 1887; amd. Sec. 2135, C. Civ. Proc. 1895; re-en. Sec. 7295, Rev. C. 1907; re-en. Sec. 8344, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1186; re-en. Sec. 8344, R.C.M. 1935; Sec. 45-506, R.C.M. 1947; R.C.M. 1947, 45-504(part), 45-506.

71-3-503. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 1387, 5th Div. Comp. Stat. 1887; amd. Sec. 3, p. 72, Ex. L. 1887; amd. Sec. 2140, C. Civ. Proc. 1895; re-en. Sec. 7300, Rev. C. 1907; re-en. Sec. 8349, R.C.M. 1921; re-en. Sec. 8349, R.C.M. 1935; amd. Sec. 24, Ch. 535, L. 1975; R.C.M. 1947, 45-511.

71-3-504. Renumbered 71-3-561. Code Commissioner, 1987.

71-3-505. Renumbered 71-3-562. Code Commissioner, 1987.

71-3-506 through 71-3-510 reserved.

71-3-511. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; R.C.M. 1947, 45-502(1), (2).

71-3-512. Renumbered 71-3-533. Code Commissioner, 1987.

71-3-513. Renumbered 71-3-534. Code Commissioner, 1987.

71-3-514. Repealed. Sec. 17, Ch. 202, L. 1987.

History: (1)En. Secs. 8 and 9, p. 334, Bannack Stat.; re-en. Secs. 8 and 9, p. 511, Cod. Stat. 1871; amd. Secs. 1 and 2, p. 238, L. 1877; re-en. Sec. 827, 5th Div. Rev. Stat. 1879; amd. Sec. 1374, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 71, Ex. L. 1887; en. Sec. 2133, C. Civ. Proc. 1895; re-en. Sec. 7293, Rev. C. 1907; re-en. Sec. 8342, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1185; re-en. Sec. 8342, R.C.M. 1935; Sec. 45-504, R.C.M. 1947; (2)En. Sec. 9, p. 334, Bannack Stat.; re-en. Sec. 9, p. 511, Cod. Stat. 1871; re-en. Sec. 828, 5th Div. Rev. Stat. 1879; re-en. Sec. 1375, 5th Div. Comp. Stat. 1887; amd. Sec. 2134, C. Civ. Proc. 1895; re-en. Sec. 7294, Rev. C. 1907; re-en. Sec. 8343, R.C.M. 1921; re-en. Sec. 8343, R.C.M. 1935; Sec. 45-505, R.C.M. 1947; R.C.M. 1947, 45-504(part), 45-505.

71-3-515. Renumbered 71-3-537. Code Commissioner, 1987.

71-3-516. Renumbered 71-3-551. Code Commissioner, 1987.

71-3-517. Renumbered 71-3-552. Code Commissioner, 1987.

71-3-518. Renumbered 71-3-553. Code Commissioner, 1987.

71-3-519. Renumbered 71-3-563. Code Commissioner, 1987.

71-3-520 reserved.

71-3-521. Scope. This part creates and provides for the attachment and enforceability of a construction lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract. A nonconsensual lien against real estate for improvements made thereon may not arise except as provided in this part.

History: En. Sec. 1, Ch. 202, L. 1987.

71-3-522. Definitions. As used in this part, the following definitions apply:

(1) "Commencement of work" means the date of the first visible change in the physical condition of the real estate caused by the first person furnishing services or materials pursuant to a particular real estate improvement contract.

(2) "Construction lien" or "lien" means a lien against real estate arising under this part.

(3) (a) "Contract price" means the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by:

(i) the price of change orders or extras;

(ii) any amounts attributable to altered specifications; or

(iii) a breach of contract, including but not limited to defects in workmanship or materials.

(b) If a price is not agreed upon by the contracting parties, the contract price means the reasonable value of all services or materials covered by the contract.

(4) (a) "Contracting owner" means a person who owns an interest in real estate and who, personally or through an agent, enters into an express or implied contract for the improvement of the real estate.

(b) For the purpose of determining whether a person is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary:

(i) between employer and employee;

(ii) between spouses;

(iii) between joint tenants; and

(iv) among tenants in common.

(5) "Original contractor" means a contractor who contracts directly with the contracting owner.

(6) (a) "Real estate improvement contract" means an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of the real estate, including:

(i) alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(ii) construction or installation on, above, or below the surface of land;

(iii) demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(iv) seeding, sodding, or other landscape operation;

(v) surface or subsurface testing, boring, or analysis; and

(vi) preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of the real estate, regardless of whether they are used to produce a change in the physical condition of the real estate.

(b) For the purpose of claiming a construction lien, a real estate improvement contract does not include:

(i) a contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on the land or a similar contract in which the activity is primarily for the purpose of making the materials available for sale or use; or

(ii) a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for the planting of crops.

History: En. Sec. 2, Ch. 202, L. 1987; amd. Sec. 1, Ch. 293, L. 2007.

71-3-523. Who may claim construction lien — limitation. A person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of the person's contract price.

History: En. Sec. 3, Ch. 202, L. 1987; amd. Sec. 2273, Ch. 56, L. 2009.

71-3-524. Limitation of lien for materials supplied. (1) A lien for furnishing materials arises only if:

(a) (i) the materials are supplied with the intent that they be used in the course of construction of or incorporated into the improvement in connection with which the lien arises; and

(ii) the intent described in subsection (1)(a)(i) may be shown by a contract of sale, by a delivery order, by delivery to the site by the lien claimant or at the lien claimant's direction, or by other evidence; and

(b) the materials are:

(i) incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement;

(iii) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) tools, appliances, or machinery used on the particular improvement. However, a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3).

(2) The delivery of materials to the site of the improvement, whether by the lien claimant or by another, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subsection (1)(b)(iv) is limited as follows:

(a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and

(b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used.

History: En. Sec. 4, Ch. 202, L. 1987; amd. Sec. 2274, Ch. 56, L. 2009.

71-3-525. Extent of lien. (1) A construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is subsequently acquired in the real estate, subject to the provisions of this section.

(2) (a) If an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located.

(b) If an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located.

(3) If the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term. Except as provided in subsection (4), it does not attach to the lessor's interest unless the lessor contracted for or agreed to the improvement before it was begun.

(4) (a) A construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by:

(i) a contracting owner who owns less than a fee simple interest; or

(ii) a lessee and the lease is forfeited by the lessee.

(b) If the work or improvement may be removed without harm to the rest of the real estate, the lienholder may have the value determined, the work or improvement sold separately, and the proceeds delivered to the lienholder to satisfy the construction lien. The purchaser shall remove the work or improvement within 45 days of the sale.

(5) If a contracting owner contracts for improvements on real estate not owned by the contracting owner as part of an improvement on the contracting owner's real estate or for the purpose of directly benefiting the contracting owner's real estate, there is a lien against the contracting owner's real estate being improved or directly benefited in favor of persons furnishing services or materials to the same extent as if the improvement had been on the contracting owner's real estate.

History: En. Sec. 5, Ch. 202, L. 1987; amd. Sec. 2275, Ch. 56, L. 2009.

71-3-526. Amount of lien. (1) A person who has furnished services or materials pursuant to a real estate improvement contract is entitled to a lien for the unpaid part of the person's contract price, subject to the provisions of 71-3-524.

(2) A person's lien is reduced by the sum of the liens of persons claiming construction liens through that person.

History: En. Sec. 6, Ch. 202, L. 1987; amd. Sec. 2276, Ch. 56, L. 2009.

71-3-527 through 71-3-530 reserved.

71-3-531. Notice of right to claim lien required — exceptions. (1) The following are not required to give notice of the right to claim a lien as required by this section:

(a) an original contractor who furnishes services or materials directly to the owner at the owner's request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), the notice may not be given later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting owner from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section may not be given later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to the owner. Notice by certified mail is effective on the date on which the notice is mailed. If the notice is delivered personally to the contracting owner, written acknowledgment of receipt must be obtained from the contracting owner. A person may not claim a construction lien unless the person has complied with this subsection.

(6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy may not be filed later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner. The notice filed with the clerk and recorder must be signed by the person filing the notice or by a person authorized to sign for the person filing the notice.

(b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed. A notice filed electronically with the clerk and recorder must be electronically signed by the person filing the notice or by a person authorized to sign for the person filing the notice.

(c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(d) A continuation of the notice must be signed by the person who filed the original notice of the right to claim a lien or by a person authorized to sign for the person who filed the original notice of the right to claim a lien and must include:

(i) the clerk and recorder's file number of the original notice;

(ii) the date on which the original notice was filed; and

(iii) the name of the person to whom the original notice was given.

(e) If a notice of the right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time that the person files the lien.

(7) A contracting owner shall provide in the construction contract with the original contractor:

(a) a street address or legal description that is sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner.

(8) At the request of any subcontractor or material supplier who may claim a lien through an original contractor providing services or materials to a contracting owner, the original contractor shall furnish to the requestor within 5 business days:

(a) a street address or legal description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner.

History: En. Sec. 7, Ch. 202, L. 1987; amd. Sec. 1, Ch. 291, L. 1989; amd. Sec. 1, Ch. 484, L. 1991; amd. Sec. 1, Ch. 357, L. 1999; amd. Sec. 2, Ch. 293, L. 2007; amd. Sec. 1, Ch. 182, L. 2009.

71-3-532. Content of notice of right to claim lien. (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information:

(a) date of mailing;

(b) owner's name;

(c) owner's address;

(d) name of person filing notice;

(e) address of person filing notice;

(f) a description sufficient to identify the property that is being improved; and

(g) the following notice:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE. This is to inform you that .... has begun to provide .... (description of services or materials) ordered by .... for improvements to property you own. The property is located at .... If .... is not paid, a lien may be filed against the property. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME: ....

ADDRESS: ....

TELEPHONE: ....

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to claim a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

— RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

— LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

— WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to claim a lien.

— OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to claim a lien have been paid or have waived the right to claim a lien against your property.

— CONSULT an attorney, a professional escrow company, or your mortgage lender.

History: En. Sec. 8, Ch. 202, L. 1987; amd. Sec. 2, Ch. 484, L. 1991; amd. Sec. 2, Ch. 357, L. 1999.

71-3-533. Notice of completion. (1) The contracting owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:

(a) the written acceptance by the contracting owner, the contracting owner's agent, or the representative of the building, improvement, or structure. The filing of a notice of completion may not be considered as an acceptance of the building, improvement, or other structure.

(b) the cessation from labor for 30 days upon any building, improvement, or structure or the alteration, addition to, or repair of the building, improvement, or structure.

(3) The notice of completion, together with an affidavit of publication as required in this section, must be filed in the office of the county clerk and recorder of the county where the property is situated, and the notice must set forth:

(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;

(b) the contracting owner's name and address and the nature of the title, if any, of the person signing the notice;

(c) a description of the property sufficient for identification;

(d) the name of the contractor, if any.

(4) The notice must be verified by the contracting owner or the owner's agent.

(5) A copy of the notice of completion must be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

(6) The contracting owner shall give a copy of the notice of completion to any person who has given the contracting owner a notice of a right to claim a lien.

History: (1), (3) thru (5)En. Sec. 3, Ch. 408, L. 1971; Sec. 45-502.1, R.C.M. 1947; (2)En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; Sec. 45-502, R.C.M. 1947; R.C.M. 1947, 45-502(3), 45-502.1; amd. Sec. 13, Ch. 202, L. 1987; Sec. 71-3-512, MCA 1985; redes. 71-3-533 by Code Commissioner, 1987; amd. Sec. 2277, Ch. 56, L. 2009.

71-3-534. Filing with county clerk — notification of owner. (1) The county clerk shall endorse upon every lien the day of its filing and make an abstract of the lien in a book to be kept for that purpose and properly indexed, containing the date of the filing, the name of the person holding the lien, the amount of the lien, the name of the person against whose property the lien is filed, and the description of the property to be charged with the lien.

(2) The clerk may not file the lien unless it is accompanied by a certification by the lien claimant or the claimant's agent that a copy of the lien has been served upon each owner of

record of the property named in the lien. Service must be made by personal service on each owner or by mailing a copy of the lien by certified mail with return receipt requested to each owner's last-known address. The certification must state that service was made by delivery of certified mail.

History: En. Sec. 7, p. 333, Bannack Stat.; re-en. Sec. 7, p. 510, Cod. Stat. 1871; amd. Sec. 2, p. 84, L. 1874; re-en. Sec. 826, 5th Div. Rev. Stat. 1879; re-en. Sec. 1373, 5th Div. Comp. Stat. 1887; amd. Sec. 2132, C. Civ. Proc. 1895; re-en. Sec. 7292, Rev. C. 1907; re-en. Sec. 8341, R.C.M. 1921; re-en. Sec. 8341, R.C.M. 1935; R.C.M. 1947, 45-503; amd. Sec. 1, Ch. 515, L. 1981; Sec. 71-3-513, MCA 1985; redes. 71-3-534 by Code Commissioner, 1987; amd. Sec. 76, Ch. 130, L. 2005.

Cross-References

Definition of registered mail, 1-1-202.

71-3-535. Attachment of lien — filing. (1) A person's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises, the person has filed a lien not later than 90 days after:

(a) the person's final furnishing of services or materials; or

(b) the owner files a notice of completion pursuant to 71-3-533.

(2) (a) The lien must be filed with the county clerk and recorder of the county in which the improved real estate is located, and the county clerk and recorder may allow the lien to be filed electronically.

(b) The person claiming the lien shall certify to the county clerk and recorder that a copy of the lien has been served on the owner of record as provided in 71-3-534(2).

(3) The lien statement must contain:

(a) the name and address of the person claiming the lien;

(b) a description of the real property against which the lien is claimed sufficient to identify it;

(c) the name of the contracting owner;

(d) the name and address of the party with whom the person claiming the lien contracted to furnish services or materials;

(e) a description of the services or materials provided;

(f) the amount unpaid for services or materials or, if no amount is fixed by the contract, a good faith estimate of the amount unpaid, designated as an estimate;

(g) (i) the date on which the services or materials were first furnished; and

(ii) the date on which the services or materials were last furnished; and

(h) a declaration that a notice of a right to claim a lien was given to the contracting owner or an explanation of why the notice was not required.

(4) A lien notice that is filed pursuant to this section before the person claiming the lien has substantially furnished services or materials pursuant to a real estate improvement contract is not effective to create a construction lien unless the lien claimant is prevented from fulfilling the lien claimant's obligation because of the fault of another person.

(5) Except as provided in subsection (6), a lien attaches at the commencement of work as defined in 71-3-522.

(6) A lien attaches when it is filed if it is for the preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures that are not used incident to producing a change in the physical condition of the real estate.

History: En. Sec. 9, Ch. 202, L. 1987; amd. Sec. 3, Ch. 357, L. 1999.

71-3-536. Content of lien notice. The notice for the lien provided for in 71-3-535 may be filed in substantially this form:

Construction Lien

I, ... (insert name and address of person claiming the construction lien), claim a construction lien pursuant to Title 71, chapter 3, of the Montana Code Annotated.

I claim this lien against .... (give description of the real property against which the lien is claimed sufficient to identify it). The contracting owner is .... (insert name of the person who owns the real estate and name of the person who entered into the contract to improve it).

At the request of .... (give name and address of party with whom person claiming the lien contracted to furnish services or materials), I provided the following: .... (give description of the services or materials provided). The amount remaining unpaid is .... (insert the amount unpaid; if no amount was fixed by the contract, give your good faith estimate of the amount and identify it as an estimate).

I first furnished these services or materials on .... (give date) and last furnished services or materials on .... (give date; if the date has not yet arrived, insert an estimate of the date on which services or materials will be last furnished and identify the date as an estimate).

I gave notice of the right to claim a lien as required by 71-3-531 on .... (give date) to .... (give name of contracting owner). .... (If it is not required to give a notice of the right to claim a lien, state the reason it is not required.)

History: En. Sec. 10, Ch. 202, L. 1987.

71-3-537. Acknowledgment of satisfaction of lien — penalty. Whenever any indebtedness that is a lien upon any real estate, structure, building, or other improvement is paid and satisfied, it is the duty of the creditors to acknowledge satisfaction of the indebtedness in the same manner as a mortgage. If a creditor fails to acknowledge satisfaction, the creditor is liable to any person injured by the failure to the amount of the injury and the costs of action.

History: En. Sec. 841, 5th Div. Rev. Stat. 1879; re-en. Sec. 1385, 5th Div. Comp. Stat. 1887; amd. Sec. 2141, C. Civ. Proc. 1895; re-en. Sec. 7301, Rev. C. 1907; re-en. Sec. 8350, R.C.M. 1921; re-en. Sec. 8350, R.C.M. 1935; R.C.M. 1947, 45-512; Sec. 71-3-515, MCA 1985; redes. 71-3-537 by Code Commissioner, 1987; amd. Sec. 2278, Ch. 56, L. 2009.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-538. Release of notice of right to claim lien. (1) A person who has filed a notice of the right to claim a lien shall file a release of the notice of the right to claim a lien when the person is paid for the services and materials that are the subject of the notice of the right to claim a lien.

(2) If a person subject to the provisions of subsection (1) has been paid for the services and materials pursuant to a real estate improvement contract, the person shall file a release of the notice of the right to claim a lien within 5 business days of the contracting owner's request that the release be filed.

(3) The release must be filed with the clerk and recorder of the county in which the improved real estate is located and must include:

(a) the clerk and recorder's file number of the notice of the right to claim a lien;

(b) the date on which the notice of the right to claim a lien was filed; and

(c) the name of the person to whom the notice of the right to claim a lien was given.

(4) The release must be signed by the person who filed the notice of the right to claim a lien or by a person authorized to sign for the person who filed the notice of the right to claim a lien.

History: En. Sec. 2, Ch. 182, L. 2009.

71-3-539 and 71-3-540 reserved.

71-3-541. Priority among holders of construction liens. (1) There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which the claimant filed the notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all construction lien claimants in full, each claimant must receive a pro rata share of the proceeds based on the amount of the claimant's respective lien.

(2) Construction liens attaching at different times have priority in the order of attachment.

History: En. Sec. 11, Ch. 202, L. 1987; amd. Sec. 2279, Ch. 56, L. 2009.

71-3-542. Priority of construction liens as against claims other than construction lien claims. (1) A construction lien arising under this part has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located and that is filed after the construction lien attaches.

(2) An interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches has priority over a construction lien arising under this part, except as provided in subsections (3) and (4).

(3) A construction lien has priority, to the extent of the value of the work or improvement that is severable, over an interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches. If the work or improvement may be removed without harm to the rest of the real property, the lienholder may have the value determined, the work or improvement sold separately on foreclosure, and the proceeds delivered to the lienholder to satisfy the construction lien.

(4) A construction lien has priority over any interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches if that interest, lien, mortgage, or encumbrance was taken to secure advances made for the purpose of paying for the particular real estate improvement to which the lien was attached.

History: **En. Sec. 12, Ch. 202, L. 1987; amd. Sec. 2280, Ch. 56, L. 2009.**

71-3-543 through 71-3-550 reserved.

71-3-551. Substitution of bond allowed — filing — amount — condition. (1) (a) Whenever a construction lien has been filed on real property, entities as provided in subsection (1)(b) may, at any time before the lien claimant has commenced an action to foreclose the construction lien or within 30 days of the service of a complaint in an action to foreclose the construction lien, file a bond with the clerk of the district court in the county in which the property is located or, if the property is located in more than one county, with the clerk of the district court of any county in which a part of the property is located.

(b) The following persons may file a bond as provided in subsection (1)(a):

(i) the contracting owner of any interest in the property, whether legal or beneficial;

(ii) the original contractor as defined in 71-3-522; or

(iii) any subcontractor.

(2) The bond must be in an amount 1½ times the amount of the construction lien and must be either in cash or written by a corporate surety company. If written by a corporate surety, the bond must be approved by a judge of the district court with which the bond is filed.

(3) The bond must be conditioned that if the construction lien claimant is finally adjudged to be entitled to recover on the claim on which the construction lien is based, the principal or the principal's sureties shall pay to the claimant the amount of the claimant's judgment, together with any interest, costs, attorney fees, and other sums that the claimant would be entitled to recover on the foreclosure of a construction lien against the principal. However, the total amount paid by the principal or the principal's sureties may not exceed the amount of the bond provided for in subsection (2).

History: **En. Sec. 1, Ch. 338, L. 1971; R.C.M. 1947, 45-513; amd. Sec. 14, Ch. 202, L. 1987; Sec. 71-3-516, MCA 1985; redes. 71-3-551 by Code Commissioner, 1987; amd. Sec. 1, Ch. 204, L. 2007; amd. Sec. 1, Ch. 407, L. 2023.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

71-3-552. Lien discharged upon filing of bond. Upon the filing of a bond as provided in 71-3-551, the lien against the real property shall forthwith be discharged and released in full and the bond shall be substituted for such lien.

History: **En. Sec. 2, Ch. 338, L. 1971; R.C.M. 1947, 45-514; Sec. 71-3-517, MCA 1985; redes. 71-3-552 by Code Commissioner, 1987.**

71-3-553. Action upon bond — period of limitation same. (1) When a bond is filed prior to the service of a complaint in an action to foreclose upon a construction lien as allowed in 71-3-551, the person filing the construction lien may bring an action upon the bond.

(2) The action must be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure applies to an action upon the bond as it would had a bond not been filed.

History: **En. Sec. 3, Ch. 338, L. 1971; R.C.M. 1947, 45-515; Sec. 71-3-518, MCA 1985; redes. 71-3-553 by Code Commissioner, 1987; amd. Sec. 2, Ch. 204, L. 2007.**

71-3-554 through 71-3-560 reserved.

71-3-561. Parties. All persons interested in the matter in controversy or in property charged with the lien or having liens thereon may be made parties.

History: En. Sec. 2138, C. Civ. Proc. 1895; re-en. Sec. 7298, Rev. C. 1907; re-en. Sec. 8347, R.C.M. 1921; re-en. Sec. 8347, R.C.M. 1935; R.C.M. 1947, 45-509; Sec. 71-3-504, MCA 1985; redes. 71-3-561 by Code Commissioner, 1987.

71-3-562. Limitation on actions. All actions under this part must be commenced within 2 years from the date of the filing of the lien.

History: En. Sec. 2139, C. Civ. Proc. 1895; re-en. Sec. 7299, Rev. C. 1907; amd. Sec. 1, Ch. 127, L. 1921; re-en. Sec. 8348, R.C.M. 1921; re-en. Sec. 8348, R.C.M. 1935; R.C.M. 1947, 45-510; Sec. 71-3-505, MCA 1985; redes. 71-3-562 by Code Commissioner, 1987.

71-3-563. Rules of practice. (1) Except as otherwise provided in this part, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this part.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 2136, C. Civ. Proc. 1895; re-en. Sec. 7296, Rev. C. 1907; re-en. Sec. 8345, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1198; re-en. Sec. 8345, R.C.M. 1935; Sec. 45-507, R.C.M. 1947; (2)En. Sec. 2137, C. Civ. Proc. 1895; re-en. Sec. 7297, Rev. C. 1907; re-en. Sec. 8346, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1199; re-en. Sec. 8346, R.C.M. 1935; Sec. 45-508, R.C.M. 1947; R.C.M. 1947, 45-507, 45-508; Sec. 71-3-519, MCA 1985; redes. 71-3-563 by Code Commissioner, 1987.

Cross-References

Civil Procedure, Title 25.

71-3-564. Arbitration of lien disputes. (1) The parties to a construction lien created under this part may agree prior to the creation of the construction lien or at any time after the construction lien is created to enter into arbitration if a dispute arises between the parties with respect to the construction lien. Arbitration entered into pursuant to this section is subject to the Uniform Arbitration Act, Title 27, chapter 5.

(2) The provisions of subsection (1) do not prohibit a party from substituting a bond for the construction lien as provided in 71-3-551. Upon the filing of the bond, the construction lien is discharged as provided in 71-3-552. The parties may continue with arbitration if they agree to do so.

History: En. Sec. 1, Ch. 152, L. 2013.

Part 6
Loggers' Liens

71-3-601. Definition of lumber — who may have lien. (1) The term "lumber", as used in this part, means all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of any nature or description manufactured from sawlogs or other timber.

(2) A person, general partnership, limited partnership, corporation, or association performing labor done upon or that assists in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber has a lien upon the product and upon all other sawlogs, piling, railroad ties, cordwood, or other timber that at the time of the filing of the claim or lien provided for in subsection (3) belonged to the person or corporation for whom the labor was performed for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber described in the claim or lien. The lien exists whether the work or labor was done at the request of the owner, the owner's agent, a contractor or subcontractor, or any person on behalf of the owner or the owner's agent or a contractor or subcontractor. The cook in a logging camp must be regarded as a person who assists in obtaining or securing any of the timber mentioned in this subsection.

(3) A person performing work or labor or assisting in manufacturing sawlogs and other timber into lumber and shingles has a lien upon the lumber while the lumber remains at the mill where it was manufactured or in the possession or under the control of the manufacturer, whether the work or labor was done at the request of the owner of the logs, the owner's agent, or any contractor or subcontractor of the owner.

(4) A person who permits another to go upon the person's timberland and cut sawlogs, piling, railroad ties, cordwood, or other timber has a lien upon the sawlogs, piling, railroad ties,

cordwood, or other timber for the price agreed to be paid for the privilege or for the price the privilege would be reasonably worth if there was no express agreement fixing the price.

History: (1), (3)En. Sec. 2, p. 127, L. 1899; re-en. Sec. 5820, Rev. C. 1907; re-en. Sec. 8319, R.C.M. 1921; re-en. Sec. 8319, R.C.M. 1935; Sec. 45-402, R.C.M. 1947; (2)En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R.C.M. 1921; Cal. Civ. C. Sec. 3065; re-en. Sec. 8318, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1967; Sec. 45-401, R.C.M. 1947; (4)En. Sec. 3, p. 127, L. 1899; re-en. Sec. 5821, Rev. C. 1907; re-en. Sec. 8320, R.C.M. 1921; re-en. Sec. 8320, R.C.M. 1935; Sec. 45-403, R.C.M. 1947; R.C.M. 1947, 45-401, 45-402, 45-403; amd. Sec. 2281, Ch. 56, L. 2009.

71-3-602. Priority. The liens provided for in this part are preferred liens and prior to any other liens, and no sale or transfer of any sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this part, those for work and labor shall be preferred. As between liens for work and labor claimed by several laborers on the same logs or lot of logs, the claims for work and labor done or performed on the identical logs proceeded against to the extent that said logs can be identified shall be preferred as against the general claims of liens for work and labor recognized and provided for in this part.

History: En. Sec. 4, p. 127, L. 1899; re-en. Sec. 5822, Rev. C. 1907; re-en. Sec. 8321, R.C.M. 1921; re-en. Sec. 8321, R.C.M. 1935; R.C.M. 1947, 45-404.

Cross-References

Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority in general, 71-3-113.
Priority of purchase money mortgage, 71-3-114.
Priority — farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — liens for seed or grain, 71-3-702.
Priority — threshers' liens, 71-3-804.
Priority — crop or grain liens for spraying or dusting, 71-3-904.
Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.
Priority — agisters' liens and liens for service, 71-3-1202.

71-3-603. Extent of liens. (1) The person rendering the service or doing the work or labor named in 71-3-601(1) through (3) is only entitled to the liens as provided herein for services, work, or labor for the period of 3 calendar months, or any part thereof next preceding the filing of the claim, as provided in 71-3-605.

(2) The person granting the privilege mentioned in 71-3-601(4) is only entitled to the lien as provided therein for sawlogs, piling, railroad ties, cordwood, or other timber cut during the 3 months next preceding the filing of the claim, as provided in 71-3-606.

History: (1)En. Sec. 5, p. 128, L. 1899; re-en. Sec. 5823, Rev. C. 1907; re-en. Sec. 8322, R.C.M. 1921; re-en. Sec. 8322, R.C.M. 1935; Sec. 45-405, R.C.M. 1947; (2)En. Sec. 6, p. 128, L. 1899; re-en. Sec. 5824, Rev. C. 1907; re-en. Sec. 8323, R.C.M. 1921; re-en. Sec. 8323, R.C.M. 1935; Sec. 45-406, R.C.M. 1947; R.C.M. 1947, 45-405, 45-406; amd. Sec. 132, Ch. 370, L. 1987.

71-3-604. Duration of lien. No lien provided for in this part binds any sawlogs, piling, railroad ties, cordwood, or other timber or lumber and shingles for a longer period than 8 calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court within that time to enforce the same. However, in case such civil action so commenced should for any cause, other than the merits, be dismissed, then the lien shall continue for the term of 1 calendar month, if the 8 months have expired to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of 8 months hereinbefore stated.

History: En. Sec. 10, p. 129, L. 1899; re-en. Sec. 5828, Rev. C. 1907; re-en. Sec. 8327, R.C.M. 1921; re-en. Sec. 8327, R.C.M. 1935; R.C.M. 1947, 45-410.

71-3-605. How to obtain lien — form of claim. (1) A person, within 30 days after the close of the rendition of the services or after the close of the work or labor mentioned in 71-3-601, claiming the benefit of this part shall file for record with the county in which the sawlogs, piling, railroad ties, cordwood, or other timber was cut or in which the lumber or shingles were manufactured a claim containing a statement of the person's demand and the amount, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom the person was employed and with a statement of the terms and conditions of the person's contract, if any. If there is no express contract, the claim must state what the service, work, or labor is reasonably worth. It must also contain a description of the property to be charged with a lien sufficient for identification with reasonable certainty, and the claim must be verified by the oath of the person or some other person to the effect that the affiant believes the claim to be true.

(2) The claim must be substantially in the following form:

...., Claimant, vs. ....

Notice is hereby given that .... of .... County, state of Montana, claims a lien upon a .... of ...., being about .... in quantity, which were cut or manufactured in .... County, state of Montana, are marked ...., and are now lying in a .... for labor performed upon and assistance rendered in .... the ....; that the name of the owner or reputed owner is ....; that .... employed .... to perform the labor and render the assistance upon the following terms and conditions: The .... agreed to pay the .... for the labor and assistance ....; that the contract has been faithfully performed and fully complied with on the part of ...., who performed labor upon and assisted in .... for a period of ....; that the labor and assistance were performed and rendered upon .... between the .... day of .... and the .... day of ...., and the rendition of the service was closed on the .... day of ...., and 30 days have not elapsed since that time; that the amount of the claimant's demand for services is ....; that no part of the demand has been paid except ...., and there is now due and remaining unpaid, after deducting all just credits and offsets, the sum of ...., in which amount the claimant claims a lien upon ....; that claimant .... also claims a lien on all .... now owned by .... of the county to secure payment for the work and labor performed in obtaining or securing the logs, piling, railroad ties, cordwood, or other timber, lumber, or shingles described.

...., Claimant.

State of Montana, County of ....

...., being first duly sworn, on oath says that the claimant is .... named in the foregoing claim, has heard the claim read, and knows the contents of the claim, and believes the same to be true.

....

Subscribed and sworn to before me this .... day of ....

....

History: En. Sec. 7, p. 128, L. 1899; re-en. Sec. 5825, Rev. C. 1907; re-en. Sec. 8324, R.C.M. 1921; re-en. Sec. 8324, R.C.M. 1935; R.C.M. 1947, 45-407; amd. Sec. 2282, Ch. 56, L. 2009.

Cross-References

Form of ordinary oath, 1-6-102.

Affirmation or declaration in lieu of oath, 1-6-104.

71-3-606. Claim for lien of landowner same. Every person mentioned in 71-3-601(4) claiming the benefit must file for record with the county clerk of the county in which such sawlogs, piling, railroad ties, cordwood, or other timber were cut a claim in substance the same as provided in 71-3-605 and verified as therein provided.

History: En. Sec. 8, p. 129, L. 1899; re-en. Sec. 5826, Rev. C. 1907; re-en. Sec. 8325, R.C.M. 1921; re-en. Sec. 8325, R.C.M. 1935; R.C.M. 1947, 45-408.

71-3-607. Immaterial defects in claim. No mistake or error in the statement of the demand or of the amount of credits and offsets allowed or of the balance asserted to be due to claimant or in the description of the property against which the claim is filed shall invalidate the lien unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due was made with intent to defraud or the court shall find that an innocent third party without notice, actual or constructive, has, since the claim was filed, become a bona fide owner of the property subject to the lien and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.

History: En. Sec. 13, p. 130, L. 1899; re-en. Sec. 5831, Rev. C. 1907; re-en. Sec. 8330, R.C.M. 1921; re-en. Sec. 8330, R.C.M. 1935; R.C.M. 1947, 45-413.

71-3-608. Duties of county clerk. The county clerk shall file any claim presented under the provisions of this part, endorse on the claim the time of receipt, keep the claim in the clerk's office for the inspection of all persons, and enter in a book, properly ruled and kept for that purpose, the names of all the parties, alphabetically arranged, the amount of the lien, and the time of filing the lien.

History: En. Sec. 9, p. 129, L. 1899; re-en. Sec. 5827, Rev. C. 1907; re-en. Sec. 8326, R.C.M. 1921; re-en. Sec. 8326, R.C.M. 1935; R.C.M. 1947, 45-409; amd. Sec. 2283, Ch. 56, L. 2009.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-609 and 71-3-610 reserved.

71-3-611. Enforcement of lien. (1) The liens provided for in this part must be enforced by a civil action in the district court of the county in which the lien was filed and must be governed by the laws regulating the proceedings in civil actions relating to the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that may be against it.

(2) A person who brings a civil action to enforce the lien, a person having a lien, or a person who is made a party to any civil action has the right to demand that the lien be enforced against the whole or any part of the sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles upon which the person has performed labor, that the person has assisted in securing or obtaining, or that the person has cut on the person's timberland, any of which occurred during the 3 months preceding the filing of the person's lien, for all the person's labor upon or for all the person's assistance in obtaining or securing the sawlogs, piling, railroad ties, cordwood, or other timber or in manufacturing the lumber into shingles during the whole or any part of the 3 months mentioned in 71-3-603 or for timber cut during the whole or any part of the 3 months.

(3) When proceedings are commenced against any lot of sawlogs, piling, railroad ties, cordwood, or other timber or lumber or shingles and some of the lienors claim liens against these specific sawlogs, piling, railroad ties, cordwood, or other timber or lumber or shingles proceeded against and others against the same generally to secure their claim for work and labor, the priority of the liens must be determined as provided in this part.

History: (1)En. Sec. 11, p. 130, L. 1899; re-en. Sec. 5829, Rev. C. 1907; re-en. Sec. 8328, R.C.M. 1921; re-en. Sec. 8328, R.C.M. 1935; Sec. 45-411, R.C.M. 1947; (2), (3)En. Sec. 12, p. 130, L. 1899; re-en. Sec. 5830, Rev. C. 1907; re-en. Sec. 8329, R.C.M. 1921; re-en. Sec. 8329, R.C.M. 1935; Sec. 45-412, R.C.M. 1947; R.C.M. 1947, 45-411, 45-412; amd. Sec. 133, Ch. 370, L. 1987; amd. Sec. 2284, Ch. 56, L. 2009.

71-3-612. Requirements to be bona fide purchaser. It must be conclusively presumed by the court that a party purchasing the property subject to the lien within the 30 days given in this part to claimants in which to file their liens is not an innocent third party nor that the party has become a bona fide owner of the property subject to the lien unless it appears that the party has paid full value for the property and has seen that the purchase money of the property has been applied to the payment of bona fide claims that are entitled to liens upon the same property under the provisions of this part, according to the priorities established in this part.

History: En. Sec. 14, p. 131, L. 1899; re-en. Sec. 5832, Rev. C. 1907; re-en. Sec. 8331, R.C.M. 1921; re-en. Sec. 8331, R.C.M. 1935; R.C.M. 1947, 45-414; amd. Sec. 2285, Ch. 56, L. 2009.

71-3-613. Parties. Any number of persons claiming liens under this part may join in the affidavit in 71-3-605 and may join in the same action and when separate actions are commenced, the court may consolidate them.

History: En. Sec. 15, p. 131, L. 1899; re-en. Sec. 5833, Rev. C. 1907; re-en. Sec. 8332, R.C.M. 1921; re-en. Sec. 8332, R.C.M. 1935; R.C.M. 1947, 45-415(part).

71-3-614. Judgment and execution. In each civil action, judgment must be rendered in favor of each person having a lien for the amount due to the person, and the court shall order any property subject to the lien to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution. The court shall apportion the proceeds of the sale to the payment of each judgment according to the priorities established in this part, pro rata in its class, according to the amount of each judgment.

History: En. Sec. 16, p. 131, L. 1899; re-en. Sec. 5834, Rev. C. 1907; re-en. Sec. 8333, R.C.M. 1921; re-en. Sec. 8333, R.C.M. 1935; R.C.M. 1947, 45-416; amd. Sec. 2286, Ch. 56, L. 2009.

Cross-References

Execution of judgment, Title 25, ch. 13.

71-3-615. Sale of property to satisfy lien. The court may order any property subject to a lien as provided in this part to be sold by the sheriff as personal property is sold on execution, either before or at the time judgment is rendered, as provided in 71-3-614, and the proceeds of such sale must be paid into court to be applied as directed in 71-3-614.

History: En. Sec. 17, p. 132, L. 1899; re-en. Sec. 5835, Rev. C. 1907; re-en. Sec. 8334, R.C.M. 1921; re-en. Sec. 8334, R.C.M. 1935; R.C.M. 1947, 45-417.

71-3-616. Penalty for destroying means of identification of property. A person who removes, injures, or destroys or who renders difficult, uncertain, or impossible of identification any sawlogs, piling, railroad ties, cordwood, shingles, or other timber upon which there is a lien as provided in this part without the express consent of the person entitled to the lien is liable to a lienholder for the damages to the amount secured by the lienholder's lien. If damage is shown to the court in a civil action to enforce the lien, the court shall enter a personal judgment for the amount in the action against the person, if the person is a party to the action, or the damages may be recovered by a civil action against that person.

History: En. Sec. 18, p. 132, L. 1899; re-en. Sec. 5836, Rev. C. 1907; re-en. Sec. 8335, R.C.M. 1921; re-en. Sec. 8335, R.C.M. 1935; R.C.M. 1947, 45-418; amd. Sec. 2287, Ch. 56, L. 2009.

Part 7
Crop Liens for Seed or Grain and Liens for Hail Insurance

71-3-701. Lien for seed or grain. A person, company, association, or corporation that furnishes to another seed to be sown or planted or funds or means with which to purchase seed to be sown or planted or to be used in the production or cultivation of a crop or crops on the lands owned or contracted to be purchased, used, leased, occupied, or rented by the other person or held under government entry, upon filing the statement provided for in 71-3-703, has a lien not exceeding the purchase price of the seed or grain furnished upon the crop produced from the seed or grain furnished, or any part of the crop, and upon the seed or grain threshed from the crop to secure the payment of the amount or the value of the seed or grain furnished or the funds or means advanced to purchase the seed or grain.

History: En. Sec. 1, Ch. 23, L. 1915; amd. Sec. 1, Ch. 15, Ex. L. 1918; re-en. Sec. 8359, R.C.M. 1921; re-en. Sec. 8359, R.C.M. 1935; R.C.M. 1947, 45-701; amd. Sec. 1, Ch. 189, L. 1989; amd. Sec. 2288, Ch. 56, L. 2009.

Cross-References

Liens on improvements and crops for amount due state — state lands, 77-2-336.
Liens on crops and improvements — state lands, 77-6-112.

71-3-702. Priority. The lien provided by 71-3-701 shall, as to the crop covered thereby, have priority over all other liens and encumbrances thereon.

History: En. Sec. 3, Ch. 23, L. 1915; re-en. Sec. 3, Ch. 15, Ex. L. 1918; re-en. Sec. 8361, R.C.M. 1921; re-en. Sec. 8361, R.C.M. 1935; R.C.M. 1947, 45-703.

Cross-References

Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority in general, 71-3-113.
Priority of purchase money mortgage, 71-3-114.
Priority — farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — loggers' liens, 71-3-602.
Priority — threshers' liens, 71-3-804.
Priority — crop or grain liens for spraying or dusting, 71-3-904.
Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.
Priority — agisters' liens and liens for service, 71-3-1202.

71-3-703. How to obtain lien. A person, company, association, or corporation entitled to a lien under 71-3-701 shall, within 90 days after the seed or grain is furnished or the funds, means, or money is advanced for the seed or grain, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. Unless the person entitled to a lien files the lien statement within the time required, the person is considered to have waived the right to a lien.

History: En. Sec. 2, Ch. 23, L. 1915; amd. Sec. 2, Ch. 15, Ex. L. 1918; re-en. Sec. 8360, R.C.M. 1921; re-en. Sec. 8360, R.C.M. 1935; R.C.M. 1947, 45-702; amd. Sec. 1, Ch. 317, L. 1983; amd. Sec. 5, Ch. 295, L. 1987; amd. Sec. 4, Ch. 529, L. 1989; amd. Sec. 2289, Ch. 56, L. 2009.

71-3-704. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness that is a lien upon grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction of the lien and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of the lien within 30 days after being requested to do so by a person having a property interest in the grain or other crops, the lienor is liable to any person injured by the failure in the amount of the injury and the costs of the action.

(2) A termination statement as described in 30-9A-513 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R.C.M. 1921; re-en. Sec. 8362, R.C.M. 1935; amd. Sec. 11-123, Ch. 264, L. 1963; R.C.M. 1947, 45-704; amd. Sec. 6, Ch. 295, L. 1987; amd. Sec. 157, Ch. 305, L. 1999.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-705. Destruction of records — when allowed. (1) All seed liens filed for record in the office of any county clerk and recorder must be retained by the county clerk in a file kept for that purpose for a period of 8 years from the time when the seed lien has ceased to be a lien on the property described in the lien.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all seed liens that have been preserved for the period of time specified in this section, upon approval by the local government records destruction subcommittee provided for in 2-6-1202.

History: (1)En. Sec. 1, Ch. 113, L. 1935; re-en. Sec. 4813.3, R.C.M. 1935; amd. Sec. 11-112, Ch. 264, L. 1963; Sec. 16-2922, R.C.M. 1947; (2)En. Sec. 2, Ch. 113, L. 1935; re-en. Sec. 4813.4, R.C.M. 1935; amd. Sec. 11-113, Ch. 264, L. 1963; Sec. 16-2923, R.C.M. 1947; R.C.M. 1947, 16-2922(part), 16-2923(part); amd. Sec. 22, Ch. 420, L. 1993.

71-3-706 through 71-3-710 reserved.

71-3-711. Lien for hail insurance. Any person, company, association, or corporation which shall furnish to another hail insurance for the purpose of protecting the party's crop from damage by hail during the hail season of the then-growing or seeded crop, whether the crop be on the land owned or contracted to be purchased, used, leased, occupied, or rented by the insured or held under government entry, shall, upon filing the statement provided for in 71-3-712, have a lien, subject to any seed lien that may then or thereafter be placed on record against the crop, for the amount due the person, company, association, or corporation furnishing the hail insurance from the insured so protected, whether it be on a note given, open account, or assessment, due or to become due, for the current year's protection, upon the crop produced on the land so protected or any part thereof and upon the seed or grain threshed from such crop to secure the payment of the amount due or the assessment levied against the insured for the insurance provided.

History: En. Sec. 1, Ch. 223, L. 1921; re-en. Sec. 8363, R.C.M. 1921; re-en. Sec. 8363, R.C.M. 1935; R.C.M. 1947, 45-705.

71-3-712. How lien obtained. Any person, company, association, or corporation entitled to a lien under 71-3-711 shall, within 30 days after the insurance is issued, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. A mutual company may file a lien for the largest amount that may become due under its assessment power, and if the amount assessed is not as large as the amount of the lien claimed, the amount assessed and due is the amount the mutual insurance company is entitled to under this lien. Unless the person, company, association, or corporation entitled to a lien files the agricultural lien statement within the time required, the person or entity is considered to have waived the right to a lien.

History: En. Sec. 2, Ch. 223, L. 1921; re-en. Sec. 8364, R.C.M. 1921; re-en. Sec. 8364, R.C.M. 1935; R.C.M. 1947, 45-706; amd. Sec. 7, Ch. 295, L. 1987; amd. Sec. 5, Ch. 529, L. 1989; amd. Sec. 2290, Ch. 56, L. 2009.

71-3-713. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness that is a lien upon grain or other crops is paid or satisfied on or before November 1 of the current year, it is the duty of the lienor to acknowledge satisfaction of the lien within 20 days after receiving payment and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of the lien, the lienor is liable to any person injured by the failure in the amount of the injury and the costs of action. If any hail lien is not satisfied on or before March 1 of the next succeeding year after the insurance was carried on the crop, the lien is considered satisfied and released of record.

(2) A termination statement as described in 30-9A-513 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R.C.M. 1921; re-en. Sec. 8365, R.C.M. 1935; amd. Sec. 11-124, Ch. 264, L. 1963; R.C.M. 1947, 45-707; amd. Sec. 8, Ch. 295, L. 1987; amd. Sec. 158, Ch. 305, L. 1999.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

Part 8
Threshers' Liens

71-3-801. Who may have lien — amount. (1) All threshers or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers have a lien upon the grain and other crops swathed or threshed by the threshing or swathing machine or cut and threshed by the combine harvester and thresher for and on account of the services rendered and the labor performed by them on the grain and crops swathed or threshed. The lien may be claimed by the owner of the grain for the reasonable value of the services if services are performed by the owner. Liens on grain and other crops must be charged for at the prevailing price for that particular locality in which the grain or other crop is threshed, harvested, or combined if notices are given and the lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crops is disputed by the thresher or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of Title 27, chapter 5.

History: En. Sec. 1, Ch. 25, L. 1915; re-en. Sec. 8366, R.C.M. 1921; amd. Sec. 1, Ch. 20, L. 1929; amd. Sec. 1, Ch. 112, L. 1931; amd. Sec. 1, Ch. 124, L. 1933; re-en. Sec. 8366, R.C.M. 1935; amd. Sec. 1, Ch. 308, L. 1973; R.C.M. 1947, 45-801; amd. Sec. 25, Ch. 684, L. 1985; amd. Sec. 2291, Ch. 56, L. 2009.

Cross-References

Liens on improvements and crops for amount due state — state lands, 77-2-336.
Liens on crops and improvements — state lands, 77-6-112.

71-3-802. How lien obtained. (1) A person entitled to a lien under 71-3-801 shall file with the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, within 30 days after the last service was rendered or labor performed in the threshing of grain or other crops or the cutting and harvesting and threshing by the combined harvester and thresher.

(2) If the grain or other crops cut, harvested, and threshed are being hauled from the machine or combine directly to the elevator or to any other purchaser, the thresher, swather, or owner of the combine desiring to claim a lien shall also serve written notices upon the elevator operator or other private purchaser that the person will claim and file a lien upon the grain or other crops for the person's services or labor performed in threshing or combining and threshing the grain or crops. A copy of the statement of agricultural lien mailed by certified mail is sufficient notice to the elevator operator or other private purchaser.

History: En. Sec. 2, Ch. 25, L. 1915; amd. Sec. 1, Ch. 162, L. 1917; amd. Sec. 1, Ch. 71, L. 1921; re-en. Sec. 8367, R.C.M. 1921; amd. Sec. 2, Ch. 20, L. 1929; amd. Sec. 2, Ch. 112, L. 1931; re-en. Sec. 8367, R.C.M. 1935; amd. Sec. 2, Ch. 308, L. 1973; R.C.M. 1947, 45-802; amd. Sec. 9, Ch. 295, L. 1987; amd. Sec. 6, Ch. 529, L. 1989; amd. Sec. 1, Ch. 427, L. 1991; amd. Sec. 2292, Ch. 56, L. 2009.

Cross-References

Agricultural commodities, Title 80, ch. 4.

71-3-803. Repealed. Sec. 8, Ch. 529, L. 1989.

History: En. Sec. 3, Ch. 25, L. 1915; re-en. Sec. 8368, R.C.M. 1921; re-en. Sec. 8368, R.C.M. 1935; R.C.M. 1947, 45-803.

71-3-804. Priority. The lien for work or labor done or services rendered as specified in 71-3-801 shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or other crops, except the lien for the seed furnished for the purpose of growing this particular crop.

History: En. Sec. 4, Ch. 25, L. 1915; re-en. Sec. 8369, R.C.M. 1921; re-en. Sec. 8369, R.C.M. 1935; R.C.M. 1947, 45-804.

Cross-References

Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority in general, 71-3-113.
Priority of purchase money mortgage, 71-3-114.
Priority — farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — loggers' liens, 71-3-602.
Lien for seed or grain, 71-3-701.
Priority — liens for seed or grain, 71-3-702.

Priority — crop or grain liens for spraying or dusting, 71-3-904.
Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.
Priority — agisters' liens and liens for service, 71-3-1202.

71-3-805. Who considered owners. Every person, including guardians or minors, married persons, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are threshed or the services rendered or labor performed is deemed the owner thereof for the purposes herein mentioned.

History: En. Sec. 8, Ch. 25, L. 1915; re-en. Sec. 8373, R.C.M. 1921; re-en. Sec. 8373, R.C.M. 1935; amd. Sec. 26, Ch. 535, L. 1975; R.C.M. 1947, 45-808.

71-3-806. Parties. All persons interested in the matter in controversy or the property to be charged with the lien or having liens thereon may be made parties to an action for the foreclosure thereof.

History: En. Sec. 7, Ch. 25, L. 1915; re-en. Sec. 8372, R.C.M. 1921; re-en. Sec. 8372, R.C.M. 1935; R.C.M. 1947, 45-807.

71-3-807. Limitations of actions. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 6 months from the filing of the lien.

History: En. Sec. 5, Ch. 25, L. 1915; re-en. Sec. 8370, R.C.M. 1921; amd. Sec. 1, Ch. 28, L. 1923; re-en. Sec. 8370, R.C.M. 1935; R.C.M. 1947, 45-805.

71-3-808. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness that is a lien upon any grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction of the lien and to discharge the lien of record. If a lienor fails to acknowledge satisfaction and discharge the lien within 30 days after being requested to do so by a person having a property interest in the grain or other crops, the lienor is liable to any person injured by the failure in the amount of the injury and the costs of action.

(2) A termination statement as described in 30-9A-513 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R.C.M. 1921; re-en. Sec. 8374, R.C.M. 1935; amd. Sec. 11-125, Ch. 264, L. 1963; R.C.M. 1947, 45-809; amd. Sec. 10, Ch. 295, L. 1987; amd. Sec. 159, Ch. 305, L. 1999.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-809. Rules of practice. Except as otherwise provided, the provisions of Title 25 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

History: En. Sec. 6, Ch. 25, L. 1915; re-en. Sec. 8371, R.C.M. 1921; re-en. Sec. 8371, R.C.M. 1935; R.C.M. 1947, 45-806.

71-3-810. Destruction of records — when allowed. (1) All threshers' liens filed for record in the office of any county clerk and recorder must be retained by the county clerk in a file kept for that purpose for a period of 8 years from the time when the threshers' lien has ceased to be a lien on the property described in the lien.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all threshers' liens that have been preserved for the period of time specified in this section, upon approval by the local government records destruction subcommittee provided for in 2-6-1202.

History: (1)En. Sec. 1, Ch. 113, L. 1935; re-en. Sec. 4813.3, R.C.M. 1935; amd. Sec. 11-112, Ch. 264, L. 1963; Sec. 16-2922, R.C.M. 1947; (2)En. Sec. 2, Ch. 113, L. 1935; re-en. Sec. 4813.4, R.C.M. 1935; amd. Sec. 11-113, Ch. 264, L. 1963; Sec. 16-2923, R.C.M. 1947; R.C.M. 1947, 16-2922(part), 16-2923(part); amd. Sec. 23, Ch. 420, L. 1993.

Part 9
Fertilizer and Pesticide Liens

71-3-901. Who may have lien — amount. A person, firm, corporation, or partnership that under contract, express or implied, performs labor or services or furnishes material in crop dusting or spraying grains or crops, whether by aerial or ground application, for the purpose of fertilization or weed, disease, or insect control for promoting the growth of the grains or crops has a lien upon all grains or crops dusted or sprayed for and on account of the labor or service performed and material furnished, upon complying with the provisions of this part. A lien may not exceed the prevailing price charged in the particular locality in which the grain or crops are sprayed or dusted.

History: **En. Sec. 1, Ch. 205, L. 1953; R.C.M. 1947, 45-1401; amd. Sec. 1, Ch. 316, L. 1983; amd. Sec. 1, Ch. 125, L. 1993.**

71-3-902. How lien obtained. (1) A person, firm, corporation, or partnership that is entitled to a lien under this part shall, within 90 days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125.

(2) A person, firm, corporation, or partnership that is entitled to a lien and that intends to file a lien under this part shall give notice, by certified mail, of intent to file to the person, firm, corporation, or partnership for which labor or service was performed or materials furnished.

History: **En. Sec. 2, Ch. 205, L. 1953; amd. Sec. 1, Ch. 65, L. 1955; R.C.M. 1947, 45-1402; amd. Sec. 11, Ch. 295, L. 1987; amd. Sec. 7, Ch. 529, L. 1989; amd. Sec. 1, Ch. 56, L. 1995; amd. Sec. 1, Ch. 152, L. 1999.**

71-3-903. Repealed. Sec. 8, Ch. 529, L. 1989.

History: **En. Sec. 3, Ch. 205, L. 1953; R.C.M. 1947, 45-1403.**

71-3-904. Priority. The lien for labor or services performed or material furnished as specified in this part shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or crops, except the lien for seed, hail insurance, threshing, labor, and warehouse services furnished for the purpose of growing or handling the particular grain or crops.

History: **En. Sec. 4, Ch. 205, L. 1953; R.C.M. 1947, 45-1404.**

Cross-References

Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority in general, 71-3-113.
Priority of purchase money mortgage, 71-3-114.
Liens for salaries and wages, 71-3-301.
Priority — farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — loggers' liens, 71-3-602.
Lien for seed or grain, 71-3-701.
Priority — liens for seed or grain, 71-3-702.
Threshers' liens, 71-3-801.
Priority — threshers' liens, 71-3-804.
Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.
Priority — agisters' liens and liens for service, 71-3-1202.

71-3-905. Who considered owners. Every person, including guardians or minors, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are dusted or sprayed or the services or labor performed or material furnished is deemed the owner thereof for the purposes herein mentioned.

History: **En. Sec. 9, Ch. 205, L. 1953; R.C.M. 1947, 45-1409.**

71-3-906. Parties. All persons interested in the matter in controversy or the property to be charged with the lien or having liens thereon shall be made parties to an action for the foreclosure thereof.

History: **En. Sec. 8, Ch. 205, L. 1953; R.C.M. 1947, 45-1408.**

71-3-907. Limitations of actions. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 1 year from the day of the filing of the lien.

History: **En. Sec. 5, Ch. 205, L. 1953; R.C.M. 1947, 45-1405.**

71-3-908. Acknowledgment of satisfaction and discharge of lien — penalty. (1) Whenever the indebtedness that is a lien upon any grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction of the lien and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge the lien within 30 days after being requested to do so by a person having a property interest in the grain or crops, the lienor is liable to any person injured by the failure in the amount of the injury and the costs of action.

(2) A termination statement as described in 30-9A-513 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: **En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963; R.C.M. 1947, 45-1410; amd. Sec. 12, Ch. 295, L. 1987; amd. Sec. 160, Ch. 305, L. 1999.**

Cross-References
Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-909. Rules of practice. (1) Except as otherwise provided, the provisions of Title 25 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 6, Ch. 205, L. 1953; Sec. 45-1406, R.C.M. 1947; (2)En. Sec. 7, Ch. 205, L. 1953; Sec. 45-1407, R.C.M. 1947; R.C.M. 1947, 45-1406, 45-1407.

Cross-References
Civil Procedure, Title 25.

Part 10
Labor and Material Liens on Oil and Gas Wells and Pipelines

71-3-1001. Definitions. As used in this part, the following definitions apply:

(1) "Furnish" means sell or rent.

(2) "Material" means material, fuel, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but does not include drilling rigs or hoists or their integral component parts except wire lines.

(3) "Owner" includes a person holding any interest in the legal or equitable title, or both, and purchasers under executory contract.

History: (1), (2)En. 45-1012 by Sec. 12, Ch. 143, L. 1957; Sec. 45-1012, R.C.M. 1947; (3)En. 45-1011 by Sec. 11, Ch. 143, L. 1957; Sec. 45-1011, R.C.M. 1947; R.C.M. 1947, 45-1011(part), 45-1012.

71-3-1002. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines — exceptions. (1) Any person, corporation, or partnership that under expressed or implied contract with the owner of any leasehold for oil and gas purposes or the owner of any gas pipe or oil pipeline or with the trustee or agent of the owner performs labor or furnishes material or services used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well or oil or gas pipeline or who furnishes any material or services or performs any labor in constructing or putting together any of the machinery used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well or oil or gas pipeline, whether or not the material is incorporated into or becomes a part of the oil or gas well or oil or gas pipeline, may have a lien for the amount due, including associated transportation and mileage charges and interest from the date the amount was due, upon:

(a) the whole of the leasehold or oil or gas pipeline;

(b) the appurtenances on the leasehold or oil or gas pipeline;

(c) all material owned by the owner of the leasehold or oil or gas pipeline and used in the digging, drilling, torpedoing, completing, operating, or repairing of the oil or gas well or oil or gas pipeline;

(d) all oil or gas wells located on the leasehold; and

(e) all oil or gas produced from the leasehold, subject to the provisions of Title 71, chapter 3, part 16.

(2) If labor is performed for, or materials or services are furnished to, the owner of the working interest in only a portion of the acreage covered by a lease, the lien granted under subsection (1) must be restricted to the portion of the acreage that is covered by the lease.

(3) A lien granted under subsection (1) does not extend to any royalty interests, overriding royalty interests, or oil payments created prior to the date the first item of material or services are furnished or the date the first labor is performed.

History: En. Sec. 1, Ch. 45, L. 1917; re-en. Sec. 8375, R.C.M. 1921; amd. Sec. 1, Ch. 152, L. 1923; re-en. Sec. 8375, R.C.M. 1935; amd. Sec. 1, Ch. 143, L. 1957; R.C.M. 1947, 45-1001; amd. Sec. 9, Ch. 367, L. 2009.

71-3-1003. Lien for labor or supplies furnished for contractor. Any person, partnership, or corporation that furnishes materials or services as a subcontractor or to a contractor or a subcontractor or any person who performs labor under a subcontractor with a contractor or who, as an artisan or day laborer in the employ of such contractor or subcontractor, performs any such labor has a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section attaches to all materials and fixtures owned by such original contractor or subcontractor for whom the labor is performed or materials or services furnished and used or employed or furnished to be used or employed in the drilling or operating of such oil and gas wells or in the construction of such pipeline.

History: **En. Sec. 2, Ch. 45, L. 1917; re-en. Sec. 8376, R.C.M. 1921; re-en. Sec. 8376, R.C.M. 1935; amd. Sec. 2, Ch. 143, L. 1957; R.C.M. 1947, 45-1002; amd. Sec. 4, Ch. 11, L. 1979.**

71-3-1004. How lien perfected. A person, corporation, or partnership claiming a lien under this part shall file with the county clerk of the county in which the land, leasehold, or pipeline or some part of the land, leasehold, or pipeline is situated a statement verified by affidavit setting forth the amount claimed and the items of the claim, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and the claimant's mailing address, a description of the leasehold or pipeline, and if the claimant is a claimant under 71-3-1003, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. The statement must be filed within 6 months after the date upon which the material or services were last furnished or labor was last performed under contract.

History: **En. 45-1004.1 by Sec. 2, Ch. 170, L. 1973; R.C.M. 1947, 45-1004.1; amd. Sec. 2293, Ch. 56, L. 2009.**

71-3-1005. Enforcement of liens — duty of county clerks. The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws for materialmen's and construction liens.

History: **En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R.C.M. 1921; amd. Sec. 2, Ch. 152, L. 1923; re-en. Sec. 8377, R.C.M. 1935; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963; amd. Sec. 1, Ch. 170, L. 1973; R.C.M. 1947, 45-1003.**

Cross-References

Attorney fees to be recovered on foreclosure of liens, 71-3-124.
Acknowledgment of lien satisfaction — penalty, 71-3-131.
Construction liens — filing with County Clerk — notification of owner, 71-3-534.

71-3-1006. Date lien arises. The lien provided for in this part arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: **En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973; R.C.M. 1947, 45-1004.2(part).**

71-3-1007. Priority. (1) Upon compliance with the provisions of 71-3-1004, such lien shall be preferred to all other titles, charges, liens, or encumbrances which may attach to or upon any of the property upon which a lien is given by this part subsequent to the date the lien herein provided for arises.

(2) All liens affixed by virtue of this part upon the same property shall be of equal standing.

(3) The lien herein provided for shall have no priority over other liens, encumbrances, or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: **(1), (2)En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973; Sec. 45-1004.2, R.C.M. 1947; (3)En. 45-1004.3 by Sec. 4, Ch. 170, L. 1973; Sec. 45-1004.3, R.C.M. 1947; R.C.M. 1947, 45-1004.2(part), 45-1004.3.**

Cross-References

Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority in general, 71-3-113.
Priority of purchase money mortgage, 71-3-114.
Priority — farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — loggers' liens, 71-3-602.
Priority — liens for seed or grain, 71-3-702.
Priority — threshers' liens, 71-3-804.
Priority — crop or grain liens for spraying or dusting, 71-3-904.
Priority — agisters' liens and liens for service, 71-3-1202.

71-3-1008. Lien for running account as single contract. All labor performed or materials or services furnished by any person entitled to a lien under this part upon the same leasehold for oil and gas purposes or the same pipeline shall for the purposes of this part be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than 6 months shall have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

History: **En. 45-1007 by Sec. 7, Ch. 143, L. 1957; R.C.M. 1947, 45-1007.**

71-3-1009. Liability fixed. This part may not be construed to fix a greater liability against the owner of the land or leasehold interest in the land than the price or sum stipulated by the owner to be paid for the materials or services furnished or labor performed. However, the risk of all payments made to the original contractor must be upon the owner if the payments are made after written notice from a person other than an original contractor is received by the owner at the owner's residence or principal place of business. The notice must set forth the name and address of the claimant and the amount and nature of the claim. Payment by the owner to the original contractor of all or any part of the contract price prior to the receipt of the notice must operate to discharge and satisfy all liens attaching to the property of the owner by virtue of this part to the extent of the payment. The owner does not have the right to offset obligations of the original contractor unless the obligations arise out of the original contract.

History: **En. 45-1008 by Sec. 8, Ch. 143, L. 1957; R.C.M. 1947, 45-1008; amd. Sec. 2294, Ch. 56, L. 2009.**

71-3-1010. Removal of property covered by lien prohibited — effect of wrongful removal. (1) When any lien provided for by this part shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property or any part thereof or cause the same to be removed from the land or premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien.

(2) In the event such property or some part thereof is about to be removed or disposed of in violation of this section, the district court for the county where such property or any part thereof is located may, upon the verified application of the holder of such lien, enjoin all persons alleged in such application to be about to remove or dispose of such property or some part thereof from removing or disposing of the same.

(3) In the event such property or any part thereof shall have been removed or disposed of in violation of this section, the holder of such lien shall be entitled in any action to foreclose the same to the appointment of a receiver to take possession of such removed or disposed of property wherever the same may be located within this state.

(4) This section shall not preclude the appointment of a receiver in actions brought to foreclose liens given by this part upon any equitable grounds warranting such appointment.

History: **En. 45-1009 by Sec. 9, Ch. 143, L. 1957; R.C.M. 1947, 45-1009.**

71-3-1011. Notice to purchaser of oil and gas. (1) Any lien claimed under this part that extends to oil or gas or the proceeds of the sale of oil or gas is subject to the provisions of Title 71, chapter 3, part 16, and must meet the requirements of subsection (2) before taking effect.

(2) (a) Written notice of a claim must be delivered to a purchaser at the purchaser's residence or principal place of business. A notice must state the name of the claimant, the claimant's address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. The notice must be delivered personally to the purchaser or by certified letter deposited in the United States mail.

(b) Until the notice is delivered as provided in subsection (2)(a), a purchaser is not liable to the claimant for any oil or gas produced upon which the lien is claimed or money from the sale of proceeds of the oil or gas upon which the lien is claimed. A purchaser shall withhold payments for oil or gas to the extent of the lien amount being claimed until delivery of notice in writing that the claim has been paid.

History: **En. 45-1010 by Sec. 10, Ch. 143, L. 1957; R.C.M. 1947, 45-1010; amd. Sec. 2295, Ch. 56, L. 2009; amd. Sec. 10, Ch. 367, L. 2009.**

71-3-1012. Effect on interest which is less than fee interest. If a lien provided for in this part attaches to an estate less than the fee, forfeiture of such estate shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this part attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien attached prior to such failure.

History: **En. 45-1011 by Sec. 11, Ch. 143, L. 1957; R.C.M. 1947, 45-1011(part).**

Part 11
Liens of Certain Health Care Providers

Part Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.
Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1101. Repealed. Sec. 9, Ch. 532, L. 1979.

History: **En. Sec. 1, Ch. 57, L. 1931; re-en. Sec. 8395.1, R.C.M. 1935; R.C.M. 1947, 45-1201.**

71-3-1102. Repealed. Sec. 9, Ch. 532, L. 1979.

History: **En. Sec. 2, Ch. 57, L. 1931; re-en. Sec. 8395.2, R.C.M. 1935; R.C.M. 1947, 45-1202.**

71-3-1103. Repealed. Sec. 9, Ch. 532, L. 1979.

History: **En. Sec. 3, Ch. 57, L. 1931; re-en. Sec. 8395.3, R.C.M. 1935; R.C.M. 1947, 45-1203.**

71-3-1104. Repealed. Sec. 9, Ch. 532, L. 1979.

History: **En. Sec. 4, Ch. 57, L. 1931; re-en. Sec. 8395.4, R.C.M. 1935; R.C.M. 1947, 45-1204.**

71-3-1105. Repealed. Sec. 9, Ch. 532, L. 1979.

History: **En. Sec. 5, Ch. 57, L. 1931; re-en. Sec. 8395.5, R.C.M. 1935; R.C.M. 1947, 45-1205.**

71-3-1106 through 71-3-1110 reserved.

71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Acupuncturist, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, Hospital, Optometrist, Naturopathic Physician, Podiatrist, Ambulance Service, Rehabilitation Facility, Long-Term Care Facility, and Outpatient Center for Surgical Services Lien Act".

History: **En. Sec. 1, Ch. 532, L. 1979; amd. Sec. 1, Ch. 85, L. 1987; amd. Sec. 1, Ch. 384, L. 1993; amd. Sec. 1, Ch. 86, L. 2001; amd. Sec. 43, Ch. 502, L. 2007; amd. Sec. 1, Ch. 224, L. 2015.**

71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, acupuncturists, chiropractors, dentists, hospitals, optometrists, naturopathic physicians, podiatrists, ambulance services, rehabilitation facilities, long-term care facilities, and outpatient centers for surgical services for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance.

History: **En. Sec. 2, Ch. 532, L. 1979; amd. Sec. 2, Ch. 496, L. 1983; amd. Sec. 2, Ch. 85, L. 1987; amd. Sec. 2, Ch. 384, L. 1993; amd. Sec. 3, Ch. 454, L. 1993; amd. Sec. 2, Ch. 86, L. 2001; amd. Sec. 44, Ch. 502, L. 2007; amd. Sec. 2, Ch. 224, L. 2015.**

71-3-1113. Definitions. As used in this part, the following definitions apply:

(1) "Ambulance service" means a person providing ground or air ambulance transport, licensed under 50-6-306, that:

(a) is in-network with at least two insurers that together provide coverage for at least 25% of health insurance insureds in the state; or

(b) accepts insurance, including copayments, coinsurance, or deductibles, as payment in full and does not offer memberships under Title 33, chapter 2, part 22.

(2) "Beneficiary" means a person entitled to insurance benefits.

(3) "Dentist" means a person practicing dentistry as provided in 37-4-101.

(4) "Insurance" means a contract through which a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

(5) "Insurer" has the meaning of a health insurance issuer provided in 33-22-140.

(6) "Outpatient center for surgical services" means a facility registered as provided in 50-32-314.

(7) "Person" means an individual, a corporation, an organization, or other legal entity.

History: En. Sec. 3, Ch. 532, L. 1979; amd. Sec. 1, Ch. 469, L. 1991; amd. Sec. 3, Ch. 86, L. 2001; amd. Sec. 45, Ch. 502, L. 2007; amd. Secs. 1, 2, Ch. 314, L. 2017.

71-3-1114. Liens of certain health care providers and health care facilities. (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, hospital, outpatient center for surgical services, optometrist, naturopathic physician, podiatrist, rehabilitation facility, long-term care facility, or ambulance service renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, hospital, outpatient center for surgical services, ambulance service, optometrist, naturopathic physician, podiatrist, rehabilitation facility, long-term care facility, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, hospital, outpatient center for surgical services, optometrist, naturopathic physician, podiatrist, rehabilitation facility, long-term care facility, or ambulance service for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, hospital, outpatient center for surgical services, ambulance service, optometrist, naturopathic physician, podiatrist, rehabilitation facility, long-term care facility, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part.

History: En. Sec. 4, Ch. 532, L. 1979; amd. Sec. 3, Ch. 85, L. 1987; amd. Sec. 3, Ch. 384, L. 1993; amd. Sec. 3, Ch. 454, L. 1993; amd. Sec. 4, Ch. 86, L. 2001; amd. Secs. 1, 2, Ch. 236, L. 2001; amd. Sec. 1, Ch. 295, L. 2007; amd. Sec. 46, Ch. 502, L. 2007; amd. Sec. 3, Ch. 224, L. 2015.

71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility, or outpatient center for surgical services claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility, or outpatient center for surgical services claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

History: En. Sec. 5, Ch. 532, L. 1979; amd. Sec. 4, Ch. 85, L. 1987; amd. Sec. 4, Ch. 384, L. 1993; amd. Sec. 5, Ch. 86, L. 2001; amd. Sec. 47, Ch. 502, L. 2007; amd. Sec. 4, Ch. 224, L. 2015.

71-3-1116. Notice of lien — filing with clerk of court. If an action is commenced for recovery for injury, disease, or death, a copy of the notice of lien may be filed in the office of the clerk of court in which the action is pending, and the filing is notice to all parties to the action.

History: En. Sec. 6, Ch. 532, L. 1979.

71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of a lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility, psychologist, licensed social worker, licensed professional counselor, hospital, or outpatient center for surgical services has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility, psychologist, licensed social worker, licensed professional counselor, hospital, or outpatient center for surgical services for the reasonable value of the services.

History: En. Sec. 7, Ch. 532, L. 1979; amd. Sec. 5, Ch. 85, L. 1987; amd. Sec. 5, Ch. 384, L. 1993; amd. Sec. 6, Ch. 86, L. 2001; amd. Sec. 48, Ch. 502, L. 2007; amd. Sec. 5, Ch. 224, L. 2015.

71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act.

(2) This part applies to all payments awarded for medical, therapy, acupuncture, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility, psychologist, licensed social worker, licensed professional counselor, hospital, or outpatient center for surgical services; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan.

History: En. Sec. 8, Ch. 532, L. 1979; amd. Sec. 1, Ch. 496, L. 1983; amd. Sec. 6, Ch. 85, L. 1987; amd. Sec. 2, Ch. 469, L. 1991; amd. Sec. 6, Ch. 384, L. 1993; amd. Sec. 7, Ch. 86, L. 2001; amd. Sec. 36, Ch. 416, L. 2005; amd. Sec. 49, Ch. 502, L. 2007; amd. Sec. 6, Ch. 224, L. 2015.

Cross-References

Workers' Compensation Act, Title 39, ch. 71.

Part 12
Agisters' Liens and Liens for Service

Part Cross-References

Bailment — deposit, Title 70, ch. 6.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1201. Liens for service — towing and storage lien — extension of lien to certain personal property contained in motor vehicle that is subject to lien — nonpossessory special liens. (1) If there is an express or implied contract for collecting, processing, packaging, or storing embryos or semen from livestock, a reproductive technology business to whom embryos or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

(2) (a) A person who, while lawfully in possession of an article of personal property, product, or commodity renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on the article. Except as provided in subsection (2)(c), the lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage.

(b) Any personal property that is in a motor vehicle belonging to an uninsured or underinsured person, or for which an insurance claim was not filed or insurance coverage for towing and storage cannot be verified, that is subject to a lien as provided in subsection (2)(a) is also subject to the lien, except for the following:

(i) consumer food products not for resale or purchase;
(ii) consumer perishable goods not for resale or purchase;
(iii) prescription items;
(iv) original operators' licenses and other original identifying documents;
(v) cash, credit cards, debit cards, checks, or checkbooks;
(vi) original personal records, original legal records, and original business records;
(vii) child safety items; and
(viii) wallets or purses.

(c) A special lien is not dependent on possession if the person asserting the lien gives the owner or the owner's agent, or attaches to the article, a document identifying the article and its owner, the services performed, the cost of those services, the cost to the owner of any parts, accessories, or equipment installed, and the signature and contact information of the person asserting the nonpossessory special lien. The person desiring to assert a special lien upon the property must also file a financing statement in the office designated for filing as provided in 30-9A-501. A nonpossessory special lien may be asserted on:

(i) implements of husbandry as defined in 61-1-101;
(ii) construction equipment as defined in 61-10-102;
(iii) motorized lawncare and landscaping equipment; and
(iv) forestry equipment.

(d) The special lien created under subsection (2)(c) may not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the property involved unless, within 30 days from the time of the completion of the service, repair, or improvement of the property, the person desiring to assert a special lien upon the property gives notice in writing to the secured party or other lienholder stating the intention to assert a special lien on the property under the terms of subsection (2)(c) and stating the nature and approximate amount of the work performed or other services furnished and the cost of any parts, accessories, or equipment installed. Service may be made either by personal service or by mailing by registered or certified mail a copy of the notice to the secured party or other lienholder at the last-known post office address. Service must be considered complete upon the deposit of the notice in the post office.

History: **En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R.C.M. 1921; Cal. Civ. C. Sec. 3051; Based on Field Civ. C. Sec. 1696; re-en. Sec. 8383, R.C.M. 1935; amd. Sec. 11-127, Ch. 264, L. 1963; R.C.M. 1947, 45-1106(part); amd. Sec. 5, Ch. 11, L. 1979; amd. Sec. 1, Ch. 169, L. 1999; amd. Sec. 2, Ch. 444, L. 2003; amd. Sec. 1, Ch. 134, L. 2007; amd. Sec. 5, Ch. 124, L. 2013; amd. Sec. 1, Ch. 391, L. 2021; amd. Sec. 1, Ch. 178, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 178, L. 2025. Amendment effective October 1, 2025.

Cross-References

Bailment — deposit, Title 70, ch. 6.

71-3-1202. Priority. (1) Subject to subsection (4), the lien created may not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the property involved unless, within 30 days from the time of receiving the property, the person desiring to assert a lien upon the property gives notice in writing to the secured party or other lienholder, stating the intention to assert a lien on the property, under the terms of this part, and stating the nature and approximate amount of the work performed or feed or other services furnished or intended to be performed or furnished.

(2) Service may be made either by personal service or by mailing by registered or certified mail a copy of the notice to the secured party or other lienholder at the last-known post-office address. Service must be considered complete upon the deposit of the notice in the post office.

(3) Within 20 days after the date of mailing or 10 days after personal service, the secured party or other lienholder or the secured party's or other lienholder's representative has the right to take possession of the property upon payment of the amount of the lien. A failure on the part of the secured party or other lienholder to take possession of the property constitutes a waiver of the priority of the security interest or other lien over the lien created by this part.

(4) With regard to a reproductive technology business, the lien created may not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the embryos or semen involved unless, within 30 days from the time of harvesting or collecting the embryos or semen, the person desiring to assert a lien upon the embryos or semen gives notice in writing to the secured party or other lienholder stating the intention to assert a lien on the embryos or semen under the terms of this part and stating the nature and approximate amount of the work performed or other services furnished or intended to be performed or furnished.

History: (1), (2)En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R.C.M. 1921; Cal. Civ. C. Sec. 3051; Based on Field Civ. C. Sec. 1696; re-en. Sec. 8383, R.C.M. 1935; amd. Sec. 11-127, Ch. 264, L. 1963; Sec. 45-1106, R.C.M. 1947; (3)En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R.C.M. 1921; Cal. Civ. C. Sec. 3052; re-en. Sec. 8384, R.C.M. 1935; amd. Sec. 11-128, Ch. 264, L. 1963; Sec. 45-1107, R.C.M. 1947; R.C.M. 1947, 45-1106(part), 45-1107; amd. Sec. 1, Ch. 308, L. 1983; amd. Sec. 3, Ch. 444, L. 2003.

Cross-References

Secured transactions — U.C.C., Title 30, ch. 9A.
Secured transactions — perfection and priority under U.C.C., Title 30, ch. 9A, part 3.
Priority in general, 71-3-113.
Priority of purchase money mortgage, 71-3-114.
Priority — farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Priority — loggers' liens, 71-3-602.
Priority — liens for seed or grain, 71-3-702.
Priority — threshers' liens, 71-3-804.
Priority — crop or grain liens for spraying or dusting, 71-3-904.
Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

71-3-1203. Enforcement of lien — sale. If payment for work, labor, or services performed or feed or material furnished is not made within 30 days after the performance of the work, labor, or services or furnishing of the feed or material, the lienor under the provisions of this part may enforce the lien in the following manner:

(1) The lienor may file a lien enforcement action in a court of competent jurisdiction in the county in which the:

(a) contract between the lienor and the owner of the property was entered into;

(b) owner resided at the time the lien enforcement action commenced; or

(c) property is located.

(2) Issuance or service of a summons is not required when a claim is made under this section. The order to show cause pursuant to subsection (5)(a) is in lieu of a summons as permitted by Rule 4(c)(2)(C), M.R.Civ.P., and Rule 4D(3) of the Montana Justice and City Courts Rules of Civil Procedure. A notice to or service of process on the owner is not required prior to the issuance of the order to show cause pursuant to subsection (5)(a).

(3) When a claim is made under this section for a lien other than a nonpossessory special lien, an affidavit must be made by the lienor claiming the property or by someone on the lienor's behalf, stating:

(a) the facts that the lienor performed a service for the property owner entitling the lienor to a lien on the owner's property pursuant to 71-3-1201;

(b) that the service described in subsection (3)(a) was performed at the written or verbal request of the owner or owner's agent;

(c) the particular property upon which the lien is claimed; and

(d) an itemized list of the charges that are due and unpaid under the lien.

(4) When a claim is made under this section for a nonpossessory special lien, the lienor shall submit to the court:

(a) a copy of the document required by 71-3-1201(2)(c); and

(b) a statement of the charges that are due and unpaid under the lien.

(5) (a) If satisfactory, the court shall order the owner of the property to show cause why the property should not be sold pursuant to the procedures in this section. The order must include the date and time for a hearing.

(b) One copy of the order to show cause provided for in subsection (5)(a) must be served on the owner by certified mail, return receipt requested, and one copy must be served by first-class mail at the owner's last address known to the lienor at least 21 days before the hearing date.

(6) The lienor shall deliver to the sheriff of the county in which the property is located a copy of the court's lien enforcement judgment.

(7) Upon receipt of the court's lien enforcement judgment, the sheriff shall advertise and sell at public auction as much of the property covered by the lien as will satisfy the lien.

(8) The sale must be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

(9) The owner of the property may request a hearing in a court of competent jurisdiction to contest any matter regarding the sale of the property.

(10) The sheriff shall apply the proceeds of the sale to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or a part that is required to discharge the claims, must be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against the property, and the balance of the proceeds must be turned over to the owner of the property.

History: En. Sec. 3, Ch. 117, L. 1921; re-en. Sec. 8385, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1927; re-en. Sec. 8385, R.C.M. 1935; R.C.M. 1947, 45-1108; amd. Sec. 1, Ch. 87, L. 1987; amd. Sec. 10, Ch. 88, L. 1987; amd. Sec. 2296, Ch. 56, L. 2009; amd. Sec. 1, Ch. 186, L. 2013; amd. Sec. 2, Ch. 391, L. 2021; amd. Sec. 1, Ch. 393, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 393, L. 2025. Amendment effective October 1, 2025.

71-3-1204. Lien not lost by fraudulent taking of property. The lien created by this part shall not be lost by reason of any forcible or fraudulent taking of the property from the possession of the person entitled to said lien, but in all such cases the person entitled to such lien shall be entitled to recover possession of the property by proper action instituted in court against any person in whose possession the property may be found.

History: En. Sec. 4, Ch. 117, L. 1921; re-en. Sec. 8386, R.C.M. 1921; re-en. Sec. 8386, R.C.M. 1935; R.C.M. 1947, 45-1109.

71-3-1205. Definition. For the purposes of this part, "reproductive technology business" means a business that collects, processes, packages, and stores embryos or semen from animals or provides breeding services for compensation.

History: En. Sec. 1, Ch. 444, L. 2003.

71-3-1206 through 71-3-1210 reserved.

71-3-1211. Agister's lien — finding — who may hold lien. (1) The legislature finds that agisters' liens require expeditious action to protect the welfare of the stock and to ensure that the cost to feed and care for the stock covered by the lien does not exceed the market value of the stock.

(2) (a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher, farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has an agister's lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock.

(b) A person holding an agister's lien pursuant to subsection (2)(a) may retain possession of the stock until the amount due is paid.

History: En. Sec. 1, Ch. 124, L. 2013.

71-3-1212. Priority. (1) An agister's lien created under 71-3-1211 does not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the stock involved unless, within 30 days from the time of receiving the stock, the person desiring to assert a lien upon the stock gives notice in writing to the secured party or other lienholder stating the intention to assert a lien on the stock under the terms of 71-3-1211 through 71-3-1214 and stating the nature and approximate amount of the work performed or feed furnished or other services furnished or intended to be performed or furnished.

(2) A new notice is not required for the offspring of the stock covered in the initial notice, but all other additional stock must be noticed separately.

(3) Service may be made either by personal service or by mailing a copy of the notice by certified mail to the secured party or other lienholder at the last-known post-office address. Service is considered complete upon the deposit of the notice in the post office.

(4) Within 20 days after the date of mailing or 10 days after personal service, the secured party or other lienholder or the secured party's or other lienholder's representative has the right to take possession of the stock upon payment of the amount of the lien. A failure on the part of the secured party or other lienholder to take possession of the stock constitutes a waiver of the priority of the security interest or other lien over the lien created by 71-3-1211 through 71-3-1214.

History: En. Sec. 2, Ch. 124, L. 2013.

71-3-1213. Enforcement of agister's lien — sale. If payment for keeping, feeding, herding, pasturing, or ranching stock is not made within 30 days after the performance of the keeping, feeding, herding, pasturing, or ranching, the person entitled to a lien under the provisions of 71-3-1211 through 71-3-1214 may enforce the lien in the following manner:

(1) The person shall deliver to the sheriff of the county in which the property is located an affidavit of the amount of the person's claim against the stock and the name of the owner of the stock or of the person at whose request the feed or material was furnished.

(2) Upon receipt of the affidavit, the sheriff shall advertise and sell at public auction as much of the stock covered by the lien as will satisfy the lien.

(3) Notice of the sale must be provided in the manner prescribed in 25-13-701(1)(b).

(4) (a) Before the sheriff sells the stock at public auction, the sheriff shall give notice of the sale to the owner or person at whose request the feed or material was furnished.

(b) Notice must be given at least 10 days before the sale to the owner or person at whose request the feed or material was furnished and to any other person holding a lien on the animals.

(c) The notice must state:

(i) the time and place of the sale;

(ii) the amount of the claim against the stock;

(iii) a description of the stock;

(iv) the name of the owner or person at whose request the feed or material was furnished; and

(v) the name of the person claiming the lien.

(d) The notice may be given by personal service or by mailing a copy of the notice by certified mail to the last-known post-office address of the owner or person at whose request the feed or material was furnished.

(e) If the sheriff is not able to effect personal service or service by mail because the location and mailing address of the owner or person at whose request the feed or material was furnished is unknown, the sheriff may give notice by posting notice of the sale in three public places in the county in which the property is located.

(5) The sheriff shall apply the proceeds of the sale to the discharge of the lien and the cost of the proceedings in selling the stock and enforcing the lien. The remainder, if any, or a part that is required to discharge the claims must be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against the stock, and the balance of the proceeds must be turned over to the owner of the stock.

(6) Before seizing stock under the provisions of this section, the sheriff may require an indemnity bond from the lienor. The indemnity bond may not exceed double the amount of the claim against the stock. The sheriff shall approve the bond and the surety or sureties on the bond.

History: En. Sec. 3, Ch. 124, L. 2013.

71-3-1214. Lien not lost by fraudulent taking of property. (1) The forcible or fraudulent taking of stock from the person holding an agister's lien pursuant to 71-3-1211 through 71-3-1214 does not extinguish the lien.

(2) The person holding the agister's lien may recover possession of the stock by proper action instituted in court against any person possessing the stock.

History: En. Sec. 4, Ch. 124, L. 2013.

Part 13
Liens on Real Estate

Part Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1301. Lien of seller of real property — waiver. (1) A person who sells real property has a vendor's lien on the real property, independent of possession, for as much of the price as remains unpaid and unsecured other than by the personal obligation of the buyer.

(2) When a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of the contract by the seller waives the seller's lien to the extent of the sum payable under the contract. However, a transfer of the contract in trust to pay debts and return the surplus is not a waiver of the lien.

History: (1)En. Sec. 3930, Civ. C. 1895; re-en. Sec. 5800, Rev. C. 1907; re-en. Sec. 8378, R.C.M. 1921; Cal. Civ. C. Sec. 3046; Field Civ. C. Sec. 1691; re-en. Sec. 8378, R.C.M. 1935; Sec. 45-1101, R.C.M. 1947; (2)En. Sec. 3931, Civ. C. 1895; re-en. Sec. 5801, Rev. C. 1907; re-en. Sec. 8379, R.C.M. 1921; Cal. Civ. C. Sec. 3047; Based on Field Civ. C. Sec. 1692; re-en. Sec. 8379, R.C.M. 1935; Sec. 45-1102, R.C.M. 1947; R.C.M. 1947, 45-1101, 45-1102; amd. Sec. 2297, Ch. 56, L. 2009.

71-3-1302. Purchaser's lien on real property. A person who pays to the owner any part of the price of real property under an agreement for the sale of real property has a special lien upon the property, independent of possession, for the part of the amount paid that the person is entitled to recover in case of a failure of consideration.

History: En. Sec. 3934, Civ. C. 1895; re-en. Sec. 5804, Rev. C. 1907; re-en. Sec. 8382, R.C.M. 1921; Cal. Civ. C. Sec. 3050; Field Civ. C. Sec. 1695; re-en. Sec. 8382, R.C.M. 1935; R.C.M. 1947, 45-1105; amd. Sec. 2298, Ch. 56, L. 2009.

71-3-1303. Extent of liens. The liens defined in 71-3-1301 and 71-3-1302 are valid against everyone claiming under the debtor, except a purchaser and encumbrancer in good faith and for value.

History: En. Sec. 3932, Civ. C. 1895; re-en. Sec. 5802, Rev. C. 1907; re-en. Sec. 8380, R.C.M. 1921; Cal. Civ. C. Sec. 3048; Field Civ. C. Sec. 1693; re-en. Sec. 8380, R.C.M. 1935; R.C.M. 1947, 45-1103.

Part 14
Hotel Liens

Part Cross-References

Bailment — innkeepers, Title 70, ch. 6, part 5.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1401. Lien of hotelkeepers. Hotelkeepers and boardinghouse and lodginghouse keepers have a lien upon the baggage and other property of value brought into the hotel, inn, boardinghouse, or lodginghouse by a guest, boarder, or lodger for the guest's, boarder's, or lodger's accommodation, board, or lodging and room rent and extras that are furnished at the guest's, boarder's, or lodger's request, with the right of the possession of the baggage or other property of value until all charges are paid. This section may not be construed to give a lien upon property sold on the installment plan, title to which is to remain in the vendor until final payment.

History: En. Sec. 2502, Civ. C. 1895; amd. Sec. 1, p. 132, L. 1899; re-en. Sec. 5166, Rev. C. 1907; re-en. Sec. 7675, R.C.M. 1921; Cal. Civ. C. Sec. 1861; re-en. Sec. 7675, R.C.M. 1935; R.C.M. 1947, 34-103; amd. Sec. 2299, Ch. 56, L. 2009.

Cross-References

Agisters' liens and liens for service, 71-3-1201 through 71-3-1204.

71-3-1402. Enforcement of lien. Any hotelkeeper or innkeeper who has a lien upon any of the goods, baggage, or other chattel property of the hotelkeeper's or innkeeper's guests may, at the expiration of 6 months from the date of the departure of the guest from the hotel or inn, sell and dispose of the baggage or property at public auction and to the highest bidder for cash or as much that is necessary to pay the sum due the hotelkeeper or innkeeper, together with the cost of storage, advertisement, and sale.

History: En. Sec. 2512, Civ. C. 1895; re-en. Sec. 5175, Rev. C. 1907; re-en. Sec. 7682, R.C.M. 1921; re-en. Sec. 7682, R.C.M. 1935; R.C.M. 1947, 34-110; amd. Sec. 2300, Ch. 56, L. 2009.

71-3-1403. Notice of sale. Before proceeding to the sale of the property of any guest, as provided in 71-3-1402, the hotelkeeper or innkeeper shall cause a notice of the sale, containing a description of the property to be sold and the time and place where the property will be sold, to be published once each week for 2 successive weeks in a newspaper published in the city or town in which the hotel or inn is situated or, if a newspaper is not published in the city or town, in a newspaper published nearest to the city or town. If any balance arising from the sale is not claimed by the rightful owner within 30 days from the day of the sale, the balance must be paid into the treasury of the county in which the sale took place. If the balance is not claimed by the owner or the owner's legal representatives within 1 year, the balance must be paid into the school fund of the county.

History: En. Sec. 2513, Civ. C. 1895; re-en. Sec. 5176, Rev. C. 1907; re-en. Sec. 7683, R.C.M. 1921; re-en. Sec. 7683, R.C.M. 1935; R.C.M. 1947, 34-111; amd. Sec. 2301, Ch. 56, L. 2009.

Part 15
Miscellaneous Liens

Part Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1501. Lien of factor. A factor has a general lien, dependent on possession, for all that is due to the factor upon all articles of commercial value that are entrusted to the factor by the same principal.

History: En. Sec. 3936, Civ. C. 1895; re-en. Sec. 5806, Rev. C. 1907; re-en. Sec. 8387, R.C.M. 1921; Cal. Civ. C. Sec. 3053; Field Civ. C. Sec. 1697; re-en. Sec. 8387, R.C.M. 1935; R.C.M. 1947, 45-1110; amd. Sec. 2302, Ch. 56, L. 2009.

71-3-1502. Banker's lien. A banker has a general lien, dependent on possession, upon all property in the banker's hands belonging to a customer for the balance due to the banker from the customer in the course of the business.

History: En. Sec. 3937, Civ. C. 1895; re-en. Sec. 5807, Rev. C. 1907; re-en. Sec. 8388, R.C.M. 1921; Cal. Civ. C. Sec. 3054; Field Civ. C. Sec. 1698; re-en. Sec. 8388, R.C.M. 1935; R.C.M. 1947, 45-1111; amd. Sec. 2303, Ch. 56, L. 2009.

71-3-1503. Officer's lien. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon that property, which authorizes the officer to hold it until the process is discharged or satisfied or a judicial sale of the property is had.

History: En. Sec. 3940, Civ. C. 1895; re-en. Sec. 5810, Rev. C. 1907; re-en. Sec. 8391, R.C.M. 1921; Cal. Civ. C. Sec. 3057; Field Civ. C. Sec. 1701; re-en. Sec. 8391, R.C.M. 1935; R.C.M. 1947, 45-1114; amd. Sec. 2304, Ch. 56, L. 2009.

71-3-1504. Judgment lien. The lien of a judgment is regulated by Title 25.

History: En. Sec. 3941, Civ. C. 1895; re-en. Sec. 5811, Rev. C. 1907; re-en. Sec. 8392, R.C.M. 1921; Cal. Civ. C. Sec. 3058; Field Civ. C. Sec. 1703; re-en. Sec. 8392, R.C.M. 1935; R.C.M. 1947, 45-1115.

Cross-References

Judgment liens — expiration, 25-9-301.

71-3-1505. Lien for rental on frozen food compartments. A person who operates a frozen food plant that offers individual compartments to the public has a lien on the property in the person's possession for rentals or other charges due. Liens may be foreclosed in the same way provided for chattel mortgages.

History: En. Sec. 13, Ch. 17, L. 1967; R.C.M. 1947, 27-623; amd. Sec. 2305, Ch. 56, L. 2009.

71-3-1506. Tax deficiency lien. A municipality has a lien for tax deficiency payments as described in a properly filed agreement for tax deficiency payment pursuant to 7-15-4294. The lien has the same priority as a lien for general property taxes. Lien proceeds must be disbursed pursuant to 7-15-4286(2)(a).

History: En. Sec. 5, Ch. 545, L. 2005; amd. Sec. 2, Ch. 689, L. 2023.

Part 16
Oil and Gas Owners' Lien

71-3-1601. Short title. This part may be cited as the "Montana Oil and Gas Owners' Lien Act".

History: En. Sec. 1, Ch. 367, L. 2009.

71-3-1602. Definitions. As used in this part, the following definitions apply:

(1) "First purchaser" means the first person who under contract purchases oil or gas from an interest owner at or after the time the oil or gas is severed.

(2) "Interest owner" means a person:

(a) who owns an entire or a fractional interest of any kind or nature in the oil or gas at the time it is severed; or

(b) who has a right, either express or implied, to receive a monetary payment determined by the value of the severed oil or gas.

(3) "Leasehold" means a tenant's leasehold interest, as defined in 30-2A-103, in property on which the oil or gas well is located.

(4) "Operator" means any person engaged in the severance of oil or gas on the operator's own behalf, on behalf of the operator and other persons, or on behalf of other persons.

(5) "Person" means any individual, executor, administrator, agent, trustee, or receiver or an estate, institution, business trust, trust of any other kind, firm, corporation, partnership, cooperative, limited liability company, limited liability partnership, sole proprietorship, government agency, association, or any other group acting as a unit.

(6) "Purchaser" means a person who under contract purchases oil or gas from a first purchaser.

(7) "Severed" or "severance" means the taking, extraction, or production from the leasehold of oil or gas in any manner.

History: En. Sec. 2, Ch. 367, L. 2009.

71-3-1603. Extent of lien — dispute resolution — notice — buyer in ordinary course of business. (1) To secure payment from the sale of oil or gas, an interest owner, subject to 71-3-1606(2) and subsection (4) of this section, has a continuing security interest in and the right to a lien upon the severed oil or gas or the proceeds from the sale of severed oil or gas to the extent of the interest owner's interest until the purchase price has been paid to the interest owner.

(2) If there is a bona fide dispute about the amount due to the interest owner, the security interest and lien do not accrue if the person holding the proceeds upon which the interest owner's security interest and lien are based makes a good faith determination of the amount of payment due to the interest owner and pays the interest owner that amount.

(3) (a) To have effect, a security interest or lien claimed under this part must be perfected as provided in 71-3-1605, and a copy of the notice of the lien, as provided in 71-3-1605, must be provided by an interest owner claiming the security interest or lien to other interest owners, if any, and to the operator, first purchaser, or purchaser by registered or certified mail.

(b) A security interest or lien is not valid under this part unless the provisions in subsection (3)(a) have been met.

(4) (a) A buyer in the ordinary course of business, as described in Title 30, chapter 9A, and subsection (4)(b), is entitled to the severed oil or gas free of the security interest and a lien filed by the interest owner under this part.

(b) A buyer in the ordinary course of business is:

(i) a first purchaser or purchaser who has paid the purchase price for severed oil or gas to the interest owner; or

(ii) a person who pays the purchase price for severed oil or gas to a person authorized to receive payment on behalf of an interest owner.

(c) The property of the first purchaser or purchaser described under subsection (4)(b)(ii) also is free from and not subject to a security interest or lien granted to an interest owner under this part.

History: En. Sec. 3, Ch. 367, L. 2009.

71-3-1604. Validity of lien — transferability. (1) The security interest and lien granted to an interest owner under this part are not dependent on the interest owner's or operator's possession of the severed oil or gas.

(2) A change or transfer of the actual or constructive possession of or title to the severed oil or gas from an interest owner or an operator to a first purchaser or purchaser does not void or impair the security interest or lien.

History: En. Sec. 4, Ch. 367, L. 2009.

71-3-1605. Perfection of lien — verified notice — effect of instruments — effective date. (1) An interest owner who does not receive proceeds or payment for severed oil or gas when the proceeds are due may perfect the security interest and lien claimed under 71-3-1603 by filing a notice, as provided in subsection (2), in the office of the county clerk and recorder in which the leasehold is located.

(2) A sworn affidavit must be in substantially the following form:

NOTICE OF OIL AND GAS OWNER'S LIEN

Notice is hereby given that: [name of interest owner for whom notice is filed], whose address is [address of named interest owner] claims [a fractional or decimal] interest in the oil or gas severed or proceeds of the sale from the [name of the leasehold], operated by [name and address of the operator]. The leasehold is located on the following [described land] in [name of county], Montana.

Oil or gas severed from the leasehold has been and is now or may be taken and the above-named interest owner has a security interest in and lien upon the oil or gas and the oil or gas proceeds to secure payment under the provisions of the Montana Oil and Gas Owners' Lien Act.

The signatories of this notice recognize that, if a sworn affidavit is not filed within 90 days of the time in which the payment to [the interest owner] is due, the security interest is not perfected and [the interest owner] does not receive a priority over any perfected security interest in the oil or gas described in this notice or the proceeds of the oil or gas described in this notice.

Dated:.............................

Signed by [interest owner]...............

(3) An instrument filed with the county clerk and recorder that accompanies the notice filed in subsection (1) is effective as a financing statement recognized under Title 30, chapter 9A, with or without the signature of the debtor. An instrument described in this subsection may be terminated in the same manner as a financing statement under the provisions of Title 30, chapter 9A.

(4) (a) Upon filing of the notice as provided in this section, the effective date of the interest owner's security interest and lien is the date on which the oil or gas severance occurred.

(b) Except as provided in 71-3-1606(2) and subsection (4)(c) of this section, a security interest and lien filed under this section have priority over the rights of any person whose rights or claims arise or attach to the severed oil or gas for which the purchase price has not been paid or to the proceeds of oil or gas if the oil or gas has been sold, including the severed oil or gas or the oil or gas proceeds that arise or attach between the time the security interest and lien attach and the time of filing.

(c) The security interest and the lien filed under this section do not have a priority over the security interest or lien previously created and perfected under Title 71, chapter 3, part 10, or an operating agreement or other voluntary agreement for the development and operation of the leasehold.

History: En. Sec. 5, Ch. 367, L. 2009.

71-3-1606. Rights of first purchasers. (1) The following are not affected by the provisions of this part or the filing of any instrument permitted under this part:

(a) transfer of the legal title to oil or gas from an interest owner or operator to a first purchaser;

(b) ownership of oil or gas before the oil or gas is severed, as reflected by records affecting real property; or

(c) the right of a first purchaser to take or receive oil or gas under the terms of a division order or a similar agreement for the sale and purchase of oil or gas.

(2) A first purchaser or purchaser is free to transport oil or gas products out of the state or to sell oil or gas products without permission or release of a lien perfected under 71-3-1605.

History: **En. Sec. 6, Ch. 367, L. 2009.**

71-3-1607. Expiration of lien — enforcement — consolidation — costs — personal actions — other rights and remedies. (1) A security interest and lien claimed by an interest owner under 71-3-1603 and perfected under 71-3-1605 are attached to oil or gas that has not been paid for or to the proceeds of oil or gas if the oil or gas has been sold. The security interest and lien expire 1 year after the date of the filing of the notice of the lien under 71-3-1605 unless within that year the interest owner files a personal right of action, as provided in subsection (2), in a court of competent jurisdiction in the county in which the leasehold is located. The interest owner may request an extension of the security interest and lien as part of the personal right of action filing.

(2) Any number of persons claiming security interests and liens with respect to the oil or gas from the same leasehold may join a personal right of action. The court may consolidate any separate personal rights of action.

(3) The court may allow to the prevailing party costs as provided in 71-3-124 and any money paid for copying or obtaining records filed under this part.

(4) If the personal right of action is commenced after the filing of an instrument, as provided in 71-3-1605, the instrument must be considered as a lien upon the severed oil or gas or on the proceeds from the sale of the severed oil or gas, if sold, to the extent of the interest owner's claim for payment of the amount due the interest owner or the amount of the security interest and lien recorded under 71-3-1605 by the interest owner. The security interest and lien may be further enforced as provided in 71-3-124.

(5) The provisions of this part do not impair or affect the right of a person to whom a debt may be due to maintain a personal right of action to recover the debt against a person who is liable for the debt.

(6) The provisions of this part are cumulative to the provisions of Title 30, chapter 9A, and not a limitation on or a substitution or impairment of any rights or remedies provided to a creditor against a debtor under Title 30, chapter 9A.

History: **En. Sec. 7, Ch. 367, L. 2009.**

TITLE 72

ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS

Ch.
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3. UPC — Probate and Administration.
4. UPC — Foreign Personal Representatives and Ancillary Administration.
5. UPC — Persons Under Disability — Guardianship and Conservatorship.
6. Nonprobate Transfers on Death.
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9. Disposition of Community Property Rights at Death.
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14. Escheated Estates.
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17. Anatomical Gift Act.
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21. Trustees' Powers Act. Repealed.
22. Conveyance of Trust Property by Court Order. Repealed.
23. Trusts for Benefit of Third Persons. Repealed.
24. Trusts in Relation to Real Property. Repealed.
25. Revised Uniform Principal and Income Act. Repealed.
26. Uniform Transfers to Minors Act.
27. Miscellaneous Provisions Relating to Trusts. Renumbered and Repealed.
Chapters 28 and 29 reserved.
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31. Miscellaneous Provisions Relating to Fiduciaries.
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33. Trust Code General Provisions. Repealed.
34. Principal and Income.
35. Trust Code — Judicial Proceedings Concerning Trusts. Repealed.
36. Trust Code — Rights of Third Persons. Renumbered and Repealed.
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CHAPTER 1

UNIFORM PROBATE CODE GENERAL PROVISIONS

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Chapter Cross-References

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Part 1
Short Title, Definitions, Construction, and General Provisions

72-1-101. Short title — purpose. (1) Chapters 1 through 5 and chapter 16, part 6, shall be known and may be cited as the "Uniform Probate Code".

(2) (a) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this code are to:

(i) simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(ii) discover and make effective the intent of a decedent in distribution of the decedent's property;

(iii) promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;

(iv) facilitate use and enforcement of certain trusts; and

(v) make uniform the law among the various jurisdictions.

History: (1)En. 91A-1-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-101; (2)En. Sec. 1, Ch. 313, L. 2019.

72-1-102. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-1-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-102.

72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(44) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(45) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(47) "Special administrator" means a personal representative as described by chapter 3, part 7.

(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(51) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(52) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(54) "Testator" includes an individual of either sex, as defined in 1-1-201.

(55) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(57) "Verification" has the meaning provided in 25-4-203 and may be proved by an unsworn written verification in accordance with 1-6-105.

(58) "Ward" means an individual described in 72-5-101.

(59) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

History: En. 91A-1-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-201; amd. Sec. 3, Ch. 494, L. 1993; amd. Sec. 2, Ch. 592, L. 1995; amd. Sec. 16, Ch. 9, Sp. L. May 2000; amd. Sec. 77, Ch. 130, L. 2005; amd. Sec. 146, Ch. 264, L. 2013; amd. Sec. 3, Ch. 313, L. 2019; amd. Sec. 1, Ch. 564, L. 2023; amd. Sec. 41, Ch. 685, L. 2023.

72-1-104. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

History: En. 91A-1-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-103.

Cross-References

Community property — disposition upon death, 72-9-107.

72-1-105. Construction against implied repeal. This code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

History: En. 91A-1-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-105.

72-1-106. Uniform Probate Code to take precedence. Should any provision of this code conflict with any provisions of other statutes of the state of Montana relating to probate, guardianship, or other subjects incorporated in this code and such other statute or statutes was or were adopted prior to the enactment of this code, the provisions of this code shall be deemed to be controlling.

History: En. 91A-6-104 by Sec. 19, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-104.

72-1-107. Effective date — applicability. (1) This code takes effect on July 1, 1975.

(2) Except as provided elsewhere in this code, on July 1, 1975:

(a) the code applies to any wills of decedents dying thereafter;

(b) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent, except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(c) every personal representative, including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(d) an act done before July 1, 1975, in any proceeding and any accrued right are not impaired by this code. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1975, the provisions shall remain in force with respect to that right.

(e) any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before July 1, 1975, unless there is a clear indication of a contrary intent.

History: En. 91A-6-102 by Sec. 3, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-102.

72-1-108. Evidence of death or status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death or status apply:

(1) Death occurs when an individual is determined to be dead under 50-22-101.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under subsection (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under subsections (2) through (4), who is absent for a continuous period of 5 years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in subsection (2) or (3), a document described in subsection (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

History: En. 91A-1-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-107; amd. Sec. 2, Ch. 582, L. 1989; amd. Sec. 4, Ch. 494, L. 1993.

Cross-References

Disputable presumptions, 26-1-602.

72-1-109. Acts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond, or to perform other duties, the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

History: En. 91A-1-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-108.

72-1-110. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-6-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-101.

72-1-111. Remedies for fraud — statute of limitations. (1) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, a person injured by the fraud may obtain appropriate relief, including restitution against the perpetrator of the fraud or any person benefiting from the fraud, whether innocent or not, other than a bona fide purchaser for value and without notice.

(2) Any proceeding must be commenced within 2 years after the discovery of the fraud, but a proceeding may not be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud.

(3) This section has no bearing on remedies relating to fraud practiced on a decedent during the decedent's lifetime that affects the succession of the decedent's estate.

History: En. 91A-1-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-106; amd. Sec. 2306, Ch. 56, L. 2009.

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Part 2
Scope, Jurisdiction, and Courts

72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

(1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;

(2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state;

(3) incapacitated persons and minors in this state; and

(4) survivorship and related accounts in this state.

History: En. 91A-1-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-301; amd. Sec. 4, Ch. 313, L. 2019.

72-1-202. Subject matter jurisdiction. (1) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to:

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and

(b) protection of minors and incapacitated persons.

(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

History: En. 91A-1-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-302.

72-1-203. Venue — multiple proceedings — transfer. (1) Where venue for a proceeding under this code may lie in more than one county in the state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that, as a matter of law or in the interest of justice, a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

History: En. 91A-1-303 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-303.

Cross-References

Trial venue, Title 25, ch. 2.

72-1-204. Records and certified copies. (1) The clerk of court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the clerk or court and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

(2) Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded.

(3) Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

History: En. 91A-1-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-305.

Cross-References

Probate records, 3-5-513.

72-1-205. Powers of clerk — performable by clerk or court. The acts and orders which this code specifies as performable by the clerk of court may be performed either by a judge of the court or by the clerk of court.

History: En. 91A-1-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-307.

72-1-206. Oath or affirmation on filed documents. (1) Except as otherwise specifically provided in this code, every document filed with the court under this code, including applications, petitions, reports, accounts, objections, responses, and demands for notice, must include an oath, affirmation, declaration under penalty of perjury as provided in 1-6-105, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed.

(2) A deliberate falsification of any document filed with the court pursuant to this section constitutes the offense of perjury and is punishable as the offense of false swearing.

History: En. 91A-1-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-309; amd. Sec. 4, Ch. 238, L. 2011.

Cross-References

False swearing, 45-7-202.

72-1-207. Rules of civil procedure to apply. Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this code.

History: En. 91A-1-304 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-304.

72-1-208. Jury trial. (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

(2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

History: En. 91A-1-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-306; amd. Sec. 5, Ch. 313, L. 2019.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

72-1-209. Appeals. Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the statutes and rules applicable to the appeals to the supreme court.

History: En. 91A-1-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-308.

Part 3
Notices, Parties, and Representation Generally

72-1-301. Notice — method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney. Notice must be given:

(a) by mailing a copy of the notice at least 14 days before the time set for the hearing by certified mail or ordinary first-class mail addressed to the person being notified at the post-office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known;

(b) by delivering a copy of the notice to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing the notice in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication. There must be at least 10 days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice must be made on or before the hearing and filed in the proceeding.

History: En. 91A-1-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 516, L. 1975; R.C.M. 1947, 91A-1-401; amd. Sec. 2307, Ch. 56, L. 2009.

72-1-302. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A person for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice.

History: En. 91A-1-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-402; amd. Sec. 2308, Ch. 56, L. 2009; amd. Sec. 6, Ch. 313, L. 2019.

72-1-303. Pleadings — when orders or notice binding one binds another — representation. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements, the following apply:

(1) Interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.

(b) (i) To the extent there is no conflict of interest between them or among persons represented, orders binding a:

(A) conservator bind the person whose estate the conservator controls;

(B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

(C) trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties;

(D) personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

(E) a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

(ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may represent the parent's minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-1-301 must be given to every interested person or to one who can bind an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to another who may bind the person.

(b) Notice is given to unborn or unascertained persons, who are not represented under subsection (2)(a) or (2)(b), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if the court determines that representation of the interest

otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

History: **En. 91A-1-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-403; amd. Sec. 2309, Ch. 56, L. 2009; amd. Sec. 7, Ch. 313, L. 2019.**

72-1-304 through 72-1-309 reserved.

72-1-310. Permitted pleadings — verification required. (1) The following pleadings are permitted in probate proceedings:

(a) an application, petition, report, or account filed pursuant to this title; and

(b) an objection or response filed pursuant to this title to an application, petition, report, or account.

(2) Except as provided in 25-4-203 regarding verification by an agent or attorney, the verification must be made as follows:

(a) An application must be verified by the applicant or, if there are two or more parties joining the application, by any one of the applicants.

(b) A petition must be verified by the petitioner or, if there are two or more parties joining the petition, by any one of the petitioners.

(c) A report or account must be verified by the person who has the duty to make the report or account or, if there are two or more persons having a duty to make the report or account, by any one of the persons having the duty.

(d) An objection or response must be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any one of the objectors or respondents.

History: **En. Sec. 5, Ch. 238, L. 2011; amd. Sec. 147, Ch. 264, L. 2013.**

72-1-311. Affidavit or verified petition as evidence in uncontested proceedings. In any probate matter, an affidavit or verified petition must be received as evidence when offered in an uncontested proceeding under this title.

History: **En. Sec. 6, Ch. 238, L. 2011; amd. Sec. 148, Ch. 264, L. 2013.**

72-1-312. Attorney signature — pleadings. In addition to the verification required by 25-4-203 and 72-1-310, every application and other pleading filed in connection with any probate proceeding must be signed by the attorney of the person filing the pleading if the person is represented by an attorney. The verification must be made by the person executing or filing the document with the court as provided in 72-1-310.

History: **En. Sec. 7, Ch. 238, L. 2011; amd. Sec. 149, Ch. 264, L. 2013.**

CHAPTER 2

UPC — INTESTACY, WILLS, AND DONATIVE TRANSFERS

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72-2-1017. Honorary trusts — trusts for pets.

Chapter Cross-References

Montana Rights of the Terminally Ill Act — discontinuance of life-sustaining supports, Title 50, ch. 9.
Uniform Anatomical Gift Act, Title 72, ch. 17.

Part 1
Intestate Succession

Part Cross-References

Treason and descent of estates, Art. II, sec. 30, Mont. Const.

72-2-101. Renumbered 72-2-811. Code Commissioner, 1993.

72-2-102. Renumbered 72-2-224. Code Commissioner, 1993.

72-2-103. Renumbered 72-2-812. Code Commissioner, 1993.

72-2-104. Renumbered 72-2-813. Code Commissioner, 1993.

72-2-105. Renumbered 72-2-534. Code Commissioner, 1993.

72-2-106 through 72-2-110 reserved.

72-2-111. Intestate estate. (1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in chapters 1 through 5, except as modified by the decedent's will.

(2) A decedent may by will expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed an intestate share.

History: **En. 91A-2-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-101; amd. Sec. 10, Ch. 494, L. 1993; Sec. 72-2-201, MCA 1991; redes. 72-2-111 by Code Commissioner, 1993.**

72-2-112. Share of spouse. The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(a) no descendant or parent of the decedent survives the decedent; or

(b) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first $300,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;

(3) the first $225,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first $150,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

History: **En. 91A-2-102 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 363, L. 1975; R.C.M. 1947, 91A-2-102; amd. Sec. 4, Ch. 582, L. 1989; amd. Sec. 11, Ch. 494, L. 1993; Sec. 72-2-202, MCA 1991; redes. 72-2-112 by Code Commissioner, 1993; amd. Sec. 8, Ch. 313, L. 2019.**

72-2-113. Share of heirs other than surviving spouse. (1) Any part of the intestate estate not passing to the decedent's surviving spouse under 72-2-112, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

(a) to the decedent's descendants by representation;

(b) if there is no surviving descendant, to the decedent's parents equally if both survive or to the surviving parent;

(c) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(d) if there is no surviving descendant, parent, or descendant of a parent and the decedent is:

(i) survived by one or more grandparents or descendants of grandparents:

(A) one-half to:

(I) the decedent's paternal grandparents equally if both survive;

(II) the surviving paternal grandparent; or

(III) the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(B) the other one-half to the decedent's maternal relatives in the same manner; or

(ii) not survived by a grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate to the decedent's relatives on the other side in the same manner as the half;

(e) if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in subsection (2), if more than one person is of that closest degree, those persons share equally.

(2) If more than one person is of the closest degree as provided in subsection (1)(e) but they claim through different ancestors, those who claim through the nearer ancestor must receive to the exclusion of those claiming through a more remote ancestor.

History: En. 91A-2-103 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 363, L. 1975; R.C.M. 1947, 91A-2-103; amd. Sec. 2, Ch. 52, L. 1981; amd. Sec. 12, Ch. 494, L. 1993; Sec. 72-2-203, MCA 1991; redes. 72-2-113 by Code Commissioner, 1993; amd. Sec. 66, Ch. 18, L. 1995.

72-2-114. Requirement that heir survive decedent for 120 hours. An individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under 72-2-115.

History: En. 91A-2-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-104; amd. Sec. 14, Ch. 494, L. 1993; Sec. 72-2-205, MCA 1991; redes. 72-2-114 by Code Commissioner, 1993; amd. Sec. 9, Ch. 313, L. 2019.

72-2-115. No taker. If there is no taker under the provisions of this chapter, the intestate estate passes to the state of Montana.

History: En. 91A-2-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-105; amd. Sec. 16, Ch. 494, L. 1993; Sec. 72-2-207, MCA 1991; redes. 72-2-115 by Code Commissioner, 1993.

72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)(a), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113(1)(c) or (1)(d), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

History: **En. 91A-2-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-106; amd. Sec. 13, Ch. 494, L. 1993; Sec. 72-2-204, MCA 1991; redes. 72-2-116 by Code Commissioner, 1993; amd. Sec. 67, Ch. 18, L. 1995; amd. Sec. 3, Ch. 592, L. 1995; amd. Sec. 10, Ch. 313, L. 2019.**

Cross-References

Intestate succession — degree of kinship, Title 72, ch. 11, part 1.

72-2-117. Kindred of half blood. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

History: **En. 91A-2-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-107; Sec. 72-2-211, MCA 1991; redes. 72-2-117 by Code Commissioner, 1993.**

72-2-118. Afterborn heirs. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed to survive for the required period.

History: **En. 91A-2-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-108; amd. Sec. 18, Ch. 494, L. 1993; Sec. 72-2-212, MCA 1991; redes. 72-2-118 by Code Commissioner, 1993; amd. Sec. 11, Ch. 313, L. 2019.**

Cross-References

Omitted children, 72-2-332.

72-2-119. Advancements. (1) If an individual dies intestate as to all or a portion of the individual's estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

(a) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or

(b) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For purposes of subsection (1), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(3) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

History: **En. 91A-2-110 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-110; amd. Sec. 15, Ch. 494, L. 1993; Sec. 72-2-206, MCA 1991; redes. 72-2-119 by Code Commissioner, 1993.**

72-2-120. Debts to decedent. A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

History: **En. Sec. 21, Ch. 494, L. 1993.**

72-2-121. Alienage. No individual is disqualified to take as an heir because the individual or an individual through whom the individual claims is or has been an alien.

History: **En. 91A-2-111 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-111; amd. Sec. 20, Ch. 494, L. 1993; Sec. 72-2-214, MCA 1991; redes. 72-2-121 by Code Commissioner, 1993.**

72-2-122. Dower and curtesy abolished. The estates of dower and curtesy are abolished.

History: **En. 91A-2-112 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-112; Sec. 72-2-701, MCA 1991; redes. 72-2-122 by Code Commissioner, 1993.**

72-2-123. Individuals related to decedent through two lines. An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

History: **En. Sec. 4, Ch. 52, L. 1981; amd. Sec. 17, Ch. 494, L. 1993; Sec. 72-2-210, MCA 1991; redes. 72-2-123 by Code Commissioner, 1993.**

72-2-124. Parent and child relationship. (1) Except as provided in subsections (2) and (3), for the purposes of intestate succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6, part 1.

(2) An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on:

(a) the relationship between the child and that natural parent; or

(b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

(3) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child.

History: En. 91A-2-109 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-109; amd. Sec. 3, Ch. 52, L. 1981; amd. Sec. 19, Ch. 494, L. 1993; Sec. 72-2-213, MCA 1991; redes. 72-2-124 by Code Commissioner, 1993; amd. Sec. 1, Ch. 290, L. 1999.

72-2-125. Parent barred from inheriting in certain circumstances. (1) A parent is barred from inheriting from or through a child of the parent if:

(a) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(b) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(2) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

History: En. Sec. 12, Ch. 313, L. 2019.

Part 2
Elective Share of Surviving Spouse

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

72-2-201. Renumbered 72-2-111. Code Commissioner, 1993.

72-2-202. Renumbered 72-2-112. Code Commissioner, 1993.

72-2-203. Renumbered 72-2-113. Code Commissioner, 1993.

72-2-204. Renumbered 72-2-116. Code Commissioner, 1993.

72-2-205. Renumbered 72-2-114. Code Commissioner, 1993.

72-2-206. Renumbered 72-2-119. Code Commissioner, 1993.

72-2-207. Renumbered 72-2-115. Code Commissioner, 1993.

72-2-208 and 72-2-209 reserved.

72-2-210. Renumbered 72-2-123. Code Commissioner, 1993.

72-2-211. Renumbered 72-2-117. Code Commissioner, 1993.

72-2-212. Renumbered 72-2-118. Code Commissioner, 1993.

72-2-213. Renumbered 72-2-124. Code Commissioner, 1993.

72-2-214. Renumbered 72-2-121. Code Commissioner, 1993.

72-2-215. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-2-112 by Sec. 1, Ch. 370, L. 1977; R.C.M. 1947, 91A-2-111.1.

72-2-216 through 72-2-220 reserved.

72-2-221. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-2-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-201; amd. Sec. 50, Ch. 494, L. 1993; Sec. 72-2-702, MCA 1991; redes. 72-2-221 by Code Commissioner, 1993; amd. Sec. 4, Ch. 592, L. 1995; amd. Sec. 2, Ch. 290, L. 1999.

72-2-222. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-2-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-202; amd. Sec. 6, Ch. 52, L. 1981; amd. Sec. 53, Ch. 494, L. 1993; Sec. 72-2-705, MCA 1991; redes. 72-2-222 by Code Commissioner, 1993; amd. Sec. 5, Ch. 592, L. 1995; amd. Sec. 3, Ch. 290, L. 1999.

72-2-223. Renumbered 72-2-242. Sec. 103, Ch. 313, L. 2019.

72-2-224. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-2-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-204; amd. Sec. 6, Ch. 494, L. 1993; Sec. 72-2-102, MCA 1991; redes. 72-2-224 by Code Commissioner, 1993; amd. Sec. 7, Ch. 592, L. 1995.

72-2-225. Renumbered 72-2-241. Sec. 103, Ch. 313, L. 2019.

72-2-226. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-2-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-206; amd. Sec. 8, Ch. 582, L. 1989; amd. Sec. 52, Ch. 494, L. 1993; Sec. 72-2-704, MCA 1991; redes. 72-2-226 by Code Commissioner, 1993.

72-2-227. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-2-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-207; amd. Sec. 7, Ch. 52, L. 1981; amd. Sec. 54, Ch. 494, L. 1993; Sec. 72-2-706, MCA 1991; redes. 72-2-227 by Code Commissioner, 1993; amd. Sec. 11, Ch. 592, L. 1995.

72-2-228. Renumbered 72-2-244. Sec. 103, Ch. 313, L. 2019.

72-2-229 reserved.

72-2-230. Renumbered 72-2-240. Sec. 103, Ch. 313, L. 2019.

72-2-231. Definitions. In this part:

(1) As used in sections other than 72-2-235, "decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under 72-2-235.

(2) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(6) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate, or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

(7) "Property" includes values subject to a beneficiary designation.

(8) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(9) "Transfer," as it relates to a transfer by or of the decedent, includes:

(a) an exercise or release of a presently exercisable general power of appointment held by the decedent;

(b) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

(c) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in 72-2-235(2)(b) that the decedent conferred on a nonadverse party.

History: En. Sec. 13, Ch. 313, L. 2019.

72-2-232. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

(2) If the sum of the amounts described in 72-2-237 and 72-2-239(1)(a), and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under 72-2-239(3) and (4) is less than $75,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $75,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in 72-2-239(3) and (4).

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

History: **En. Sec. 14, Ch. 313, L. 2019.**

72-2-233. Composition of the augmented estate. (1) Subject to 72-2-238, the value of the augmented estate, to the extent provided in 72-2-234 through 72-2-237, consists of the sum of the values of all property, whether real or personal; movable or immovable, tangible or intangible, wherever situated, that constitute:

(a) the decedent's net probate estate;
(b) the decedent's nonprobate transfers to others;
(c) the decedent's nonprobate transfers to the surviving spouse; and
(d) the surviving spouse's property and nonprobate transfers to others.

(2) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (1) multiplied by the following percentage:

If the decedent and the spouse were married to each other:	The percentage is:
Less than 1 year	3%
1 year but less than 2 years	6%
2 years but less than 3 years	12%
3 years but less than 4 years	18%
4 years but less than 5 years	24%
5 years but less than 6 years	30%
6 years but less than 7 years	36%
7 years but less than 8 years	42%
8 years but less than 9 years	48%
9 years but less than 10 years	54%
10 years but less than 11 years	60%
11 years but less than 12 years	68%
12 years but less than 13 years	76%
13 years but less than 14 years	84%
14 years but less than 15 years	92%
15 years or more	100%

History: **En. Sec. 15, Ch. 313, L. 2019.**

72-2-234. Decedent's net probate estate. The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims.

History: **En. Sec. 16, Ch. 313, L. 2019.**

72-2-235. Decedent's nonprobate transfers to others. The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under 72-2-234, of any of the following types, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of:

(a) property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b) the decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(c) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(2) Property transferred in any of the following forms by the decedent during marriage:

(a) any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b) any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the 2 year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(a) any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection (1)(a), (1)(b), or (1)(c), or under subsection (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those subsections if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subsection (3)(a), "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in subsection (1)(a), "termination" occurs when the power terminated by exercise or release, but not otherwise.

(b) any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the transfers to any one donee in either of the 2 years exceeded the amount excludable from taxable gifts under 26 U.S.C. 2503(b) or its successor on the date next preceding the date of the decedent's death.

History: **En. Sec. 17, Ch. 313, L. 2019.**

72-2-236. Decedent's nonprobate transfers to surviving spouse. Excluding property passing to the surviving spouse under the federal social security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(2) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner; and

(3) all other property that would have been included in the augmented estate under 72-2-235(1) or (2) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

History: **En. Sec. 18, Ch. 313, L. 2019.**

72-2-237. Surviving spouse's property and nonprobate transfers to others. (1) Except to the extent included in the augmented estate under 72-2-234 or 72-2-236, the value of the augmented estate includes the value of:

(a) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(ii) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(b) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection (1)(a)(i) or (1)(a)(ii), had the spouse been the decedent.

(2) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection (1)(a)(i) and (1)(a)(ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse.

History: **En. Sec. 19, Ch. 313, L. 2019.**

72-2-238. Exclusions, valuation, and overlapping application. (1) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse; or

(c) if the property is life insurance or accident insurance payable to persons other than the decedent's surviving spouse or the decedent's estate.

(2) The value of property:

(a) included in the augmented estate under 72-2-235, 72-2-236, or 72-2-237 is reduced in each category by enforceable claims against the included property; and

(b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system. The commuted value of life and term interests in income, annuity, or unitrust amount must be determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the decedent's death.

(3) In case of overlapping application to the same property of 72-2-235, 72-2-236, or 72-2-237, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

History: **En. Sec. 20, Ch. 313, L. 2019.**

72-2-239. Sources from which elective share payable. (1) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(a) amounts included in the augmented estate under 72-2-234 which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under 72-2-236;

(b) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(c) the marital-property portion of amounts included in the augmented estate under 72-2-237.

(2) The marital-property portion under subsection (1)(c) is computed by multiplying the value of the amounts included in the augmented estate under 72-2-237 by the percentage of the augmented estate set forth in the schedule in 72-2-233(2) appropriate to the length of time the spouse and the decedent were married to each other.

(3) If, after the application of subsection (1), the elective-share amount is not fully satisfied, or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the decedent's nonprobate transfers to others under 72-2-235(1) and (2) are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's net probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests.

(4) If, after the application of subsections (1) and (3), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(5) The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (3) or (4) is treated as a general pecuniary devise for purposes of 72-3-913.

History: **En. Sec. 21, Ch. 313, L. 2019.**

72-2-240. Personal liability of recipients. (1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the person is liable.

(2) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided

in 72-2-239, to the person who would have been entitled to it were that section or part of that section not preempted.

History: **En. Sec. 8, Ch. 592, L. 1995; amd. Sec. 26, Ch. 313, L. 2019; Sec. 72-2-230, MCA 2017; redes. 72-2-240 by Sec. 103, Ch. 313, L. 2019.**

72-2-241. Proceeding for elective share — time limit. (1) Except as provided in subsection (2), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (2), the decedent's nonprobate transfers to others described in 72-2-235, is not included within the augmented estate for the purpose of computing the elective share if the petition is filed more than 9 months after the decedent's death.

(2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others described in 72-2-235, is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under 72-2-239. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under 72-2-239 if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

History: **En. 91A-2-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-205; amd. Sec. 8, Ch. 52, L. 1981; amd. Sec. 55, Ch. 494, L. 1993; Sec. 72-2-707, MCA 1991; redes. 72-2-225 by Code Commissioner, 1993; amd. Sec. 10, Ch. 592, L. 1995; amd. Sec. 24, Ch. 313, L. 2019; Sec. 72-2-225, MCA 2017; redes. 72-2-241 by Sec. 103, Ch. 313, L. 2019.**

72-2-242. Right of election personal to surviving spouse — incapacitated surviving spouse. (1) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under 72-2-241(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under 72-2-239(3) and (4) and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse qualifies on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

(i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

(ii) to that predeceased spouse's heirs under 72-2-721.

History: En. 91A-2-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-203; amd. Sec. 51, Ch. 494, L. 1993; Sec. 72-2-703, MCA 1991; redes. 72-2-223 by Code Commissioner, 1993; amd. Sec. 6, Ch. 592, L. 1995; amd. Sec. 23, Ch. 313, L. 2019; Sec. 72-2-223, MCA 2017; redes. 72-2-242 by Sec. 103, Ch. 313, L. 2019.

72-2-243. Effect of premarital or marital agreement right to elect and of other rights. (1) In this section, "agreement" includes a subsequent agreement that affirms, modifies, or waives an earlier agreement.

(2) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be affirmed, modified, or waived wholly or partially, only by a written agreement signed by the surviving spouse, before or after the marriage. The agreement is enforceable without consideration.

(3) An agreement under subsection (2) is not enforceable if the surviving spouse proves that:

(a) the agreement was involuntary or the result of duress;

(b) the surviving spouse did not have access to independent legal representation under subsection (4);

(c) unless the surviving spouse had independent legal representation when the agreement was executed, the agreement did not include an explanation in plain language of the rights under subsection (2) being affirmed, modified, or waived; or

(d) before signing the agreement, the surviving spouse did not receive adequate financial disclosure under subsection (5).

(4) A surviving spouse had access to independent legal representation if:

(a) before signing an agreement, the surviving spouse had a reasonable time to:

(i) decide whether to retain a lawyer to provide independent legal representation; and

(ii) locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and

(b) the other spouse was represented by a lawyer and the surviving spouse had the financial ability to retain a lawyer or the other spouse agreed to pay the reasonable fees and expenses of independent legal representation.

(5) A surviving spouse had adequate financial disclosure under this section if the surviving spouse:

(a) received a reasonably accurate description and good-faith estimate of the value of the property, liabilities, and income of the other spouse;

(b) expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(c) had adequate knowledge or a reasonable basis for having adequate knowledge of the information described in subsection (5)(a).

(6) Unless an agreement under subsection (2) provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce

is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by the spouse in the property of the other spouse and a renunciation of all benefits that would otherwise pass to the renouncing spouse by intestate succession or by virtue of any will executed before the waiver or property settlement.

History: **En. Sec. 22, Ch. 313, L. 2019.**

72-2-244. Protection of payors and other third parties. (1) Although under 72-2-235 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable only for actions taken 2 or more business days after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(2) The written notice must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The availability of an action under this section does not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under 72-2-241(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-241(1) or, if filed, the demand for an elective share is withdrawn under 72-2-241(3), the court shall order disbursement to the designated beneficiary. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

History: **En. Sec. 9, Ch. 592, L. 1995; amd. Sec. 25, Ch. 313, L. 2019; Sec. 72-2-228, MCA 2017; redes. 72-2-244 by Sec. 103, Ch. 313, L. 2019.**

Part 3
Spouse and Children Unprovided for in Wills

72-2-301. Renumbered 72-2-521. Code Commissioner, 1993.

72-2-302. Renumbered 72-2-522. Code Commissioner, 1993.

72-2-303. Repealed. Sec. 134, Ch. 494, L. 1993.
History: En. 91A-2-503 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-503.

72-2-304. Renumbered 72-2-524. Code Commissioner, 1993.

72-2-305. Renumbered 72-2-525. Code Commissioner, 1993.

72-2-306. Renumbered 72-2-526. Code Commissioner, 1993.

72-2-307 through 72-2-310 reserved.

72-2-311. Renumbered 72-2-530. Code Commissioner, 1993.

72-2-312. Renumbered 72-2-533. Code Commissioner, 1993.

72-2-313. Renumbered 72-2-532. Code Commissioner, 1993.

72-2-314. Renumbered 72-2-531. Code Commissioner, 1993.

72-2-315 through 72-2-320 reserved.

72-2-321. Renumbered 72-2-527. Code Commissioner, 1993.

72-2-322. Renumbered 72-2-528. Code Commissioner, 1993.

72-2-323. Renumbered 72-2-529. Code Commissioner, 1993.

72-2-324 through 72-2-330 reserved.

72-2-331. Entitlement of spouse — premarital will. (1) If a testator's surviving spouse married the testator after the execution of the will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor devised to the descendant of such a child or passes under 72-2-613 or 72-2-614 to such a child or to a descendant of such a child, unless:

(a) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-613 or 72-2-614 to a descendant of such a child, abate as provided in 72-3-901.

History: En. 91A-2-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-301; amd. Sec. 48, Ch. 494, L. 1993; Sec. 72-2-601, MCA 1991; redes. 72-2-331 by Code Commissioner, 1993; amd. Sec. 12, Ch. 592, L. 1995.

72-2-332. Omitted children. (1) Except as provided in subsection (2), if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsections (1)(a) and (1)(b) do not apply if:

(a) it appears from the will that the omission was intentional; or

(b) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) If at the time of execution of the will the testator fails to provide in the testator's will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by subsection (1)(a), devises made by the will abate as provided in 72-3-901.

History: En. 91A-2-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-302; amd. Sec. 49, Ch. 494, L. 1993; Sec. 72-2-602, MCA 1991; redes. 72-2-332 by Code Commissioner, 1993; amd. Sec. 13, Ch. 592, L. 1995.

Cross-References

Afterborn heirs, 72-2-118.

Part 4
Exempt Property and Allowances

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

72-2-401. Renumbered 72-2-536. Code Commissioner, 1993.

72-2-402. Renumbered 72-2-535. Code Commissioner, 1993.

72-2-403 through 72-2-410 reserved.

72-2-411. Applicable law. This part applies to the estate of a decedent who dies domiciled in this state. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

History: En. Sec. 56, Ch. 494, L. 1993.

72-2-412. Homestead allowance. A decedent's surviving spouse is entitled to a homestead allowance of $22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $22,500 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 153, L. 1977; R.C.M. 1947, 91A-2-401; amd. Sec. 57, Ch. 494, L. 1993; Sec. 72-2-801, MCA 1991; redes. 72-2-412 by Code Commissioner, 1993; amd. Sec. 27, Ch. 313, L. 2019.

Cross-References

Homestead allowance, Title 70, ch. 32.

72-2-413. Exempt property. In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding $15,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $15,000 or if there is not $15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-402; amd. Sec. 58, Ch. 494, L. 1993; Sec. 72-2-802, MCA 1991; redes. 72-2-413 by Code Commissioner, 1993; amd. Sec. 28, Ch. 313, L. 2019.

72-2-414. Family allowance. (1) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.

(2) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

History: En. 91A-2-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-403; amd. Sec. 59, Ch. 494, L. 1993; Sec. 72-2-803, MCA 1991; redes. 72-2-414 by Code Commissioner, 1993.

72-2-415. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding $27,000 or periodic installments not exceeding $2,250 per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under 72-2-242(2).

History: En. 91A-2-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-404; amd. Sec. 60, Ch. 494, L. 1993; Sec. 72-2-804, MCA 1991; redes. 72-2-415 by Code Commissioner, 1993; amd. Sec. 29, Ch. 313, L. 2019.

Part 5
Wills, Will Contracts, and Custody and Deposit of Wills

72-2-501. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-603.

72-2-502. Renumbered 72-2-612. Code Commissioner, 1993.

72-2-503. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-611.

72-2-504. Renumbered 72-2-713. Code Commissioner, 1993.

72-2-505 through 72-2-510 reserved.

72-2-511. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-601.

72-2-512. Renumbered 72-2-613. Code Commissioner, 1993.

72-2-513. Renumbered 72-2-614. Code Commissioner, 1993.

72-2-514. Renumbered 72-2-617. Code Commissioner, 1993.

72-2-515. Renumbered 72-2-619. Code Commissioner, 1993.

72-2-516. Renumbered 72-2-616. Code Commissioner, 1993.

72-2-517. Renumbered 72-2-615. Code Commissioner, 1993.

72-2-518. Renumbered 72-2-618. Code Commissioner, 1993.

72-2-519. Renumbered 72-2-537. Code Commissioner, 1993.

72-2-520 reserved.

72-2-521. Who may make a will. An individual 18 or more years of age who is of sound mind may make a will.

History: En. 91A-2-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-501; amd. Sec. 22, Ch. 494, L. 1993; Sec. 72-2-301, MCA 1991; redes. 72-2-521 by Code Commissioner, 1993.

72-2-522. Execution — witnessed wills — holographic wills. (1) Except as provided in 72-2-523, 72-2-526, 72-2-533, and subsection (2) of this section, a will must be:

(a) in writing;

(b) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(c) signed by at least two individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in subsection (1)(b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(3) Intent that the document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

History: En. 91A-2-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-502; amd. Sec. 23, Ch. 494, L. 1993; Sec. 72-2-302, MCA 1991; redes. 72-2-522 by Code Commissioner, 1993.

72-2-523. Writings intended as wills. Although a document or writing added upon a document was not executed in compliance with 72-2-522, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

(1) the decedent's will;

(2) a partial or complete revocation of the will;

(3) an addition to or an alteration of the will; or

(4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

History: En. Sec. 34, Ch. 494, L. 1993.

72-2-524. Self-proved will. (1) A will may be simultaneously executed, attested, and made self-proved by acknowledgment by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ..., the testator, sign my name to this instrument this ...... day of ......, 20..., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will, that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes expressed in it, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

....
Testator

We, ..., ..., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's will, that the testator signs it willingly (or willingly directs another to sign for the testator), that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

....
Witness

....
Witness

THE STATE OF .....
COUNTY OF .....

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ...... day of ......, 20...

(SEAL) (Signed) ....
(Official capacity of officer)

....

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF .....
COUNTY OF .....

We, ..., ..., and ...., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will, that the testator signed willingly (or willingly directed another to sign for the testator), that the testator executed it as the testator's free and voluntary act for the purposes expressed in it, that each of the witnesses, in the presence and hearing of the testator, signed the will as witness, and that to the best of the witness's knowledge the testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

.... Testator
.... Witness
.... Witness

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ...... day of ......, 20...

(SEAL) (Signed) ....
(Official capacity of officer)

....

(3) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution.

History: En. 91A-2-504 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-504; amd. Sec. 5, Ch. 52, L. 1981; amd. Sec. 24, Ch. 494, L. 1993; Sec. 72-2-304, MCA 1991; redes. 72-2-524 by Code Commissioner, 1993; amd. Sec. 92, Ch. 51, L. 1999.

Cross-References

What constitutes undue influence, 28-2-407.

72-2-525. Who may witness. (1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

History: En. 91A-2-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-505; amd. Sec. 1, Ch. 6, L. 1979; amd. Sec. 5, Ch. 582, L. 1989; amd. Sec. 25, Ch. 494, L. 1993; Sec. 72-2-305, MCA 1991; redes. 72-2-525 by Code Commissioner, 1993.

72-2-526. Choice of law as to execution. A written will is valid if executed in compliance with 72-2-522 or 72-2-523 or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

History: En. 91A-2-506 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-506; amd. Sec. 26, Ch. 494, L. 1993; Sec. 72-2-306, MCA 1991; redes. 72-2-526 by Code Commissioner, 1993.

72-2-527. Revocation by writing or act. (1) A will or any part of a will is revoked:

(a) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(b) by performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part of the will or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subsection (b), "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touched any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent they are not inconsistent.

History: En. 91A-2-507 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-507; amd. Sec. 31, Ch. 494, L. 1993; Sec. 72-2-321, MCA 1991; redes. 72-2-527 by Code Commissioner, 1993.

72-2-528. Revocation by change of circumstances. Except as provided in 72-2-813 and 72-2-814, a change of circumstances does not revoke a will or any part of it.

History: En. 91A-2-508 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-508; amd. Sec. 32, Ch. 494, L. 1993; Sec. 72-2-322, MCA 1991; redes. 72-2-528 by Code Commissioner, 1993.

Cross-References

Declaration of invalidity of marriage, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

72-2-529. Revival of revoked will. (1) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under 72-2-527(1)(b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under 72-2-527(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

History: En. 91A-2-509 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-509; amd. Sec. 33, Ch. 494, L. 1993; Sec. 72-2-323, MCA 1991; redes. 72-2-529 by Code Commissioner, 1993.

72-2-530. Incorporation by reference. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: En. 91A-2-510 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-510; amd. Sec. 27, Ch. 494, L. 1993; Sec. 72-2-311, MCA 1991; redes. 72-2-530 by Code Commissioner, 1993.

72-2-531. Testamentary additions to trusts. (1) (a) A will may validly devise property to the trustee of a trust established or to be established:

(i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or

(ii) at the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.

(b) The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

(2) Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

History: En. 91A-2-511 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-511; amd. Sec. 30, Ch. 494, L. 1993; Sec. 72-2-314, MCA 1991; redes. 72-2-531 by Code Commissioner, 1993.

Cross-References

Trust Code — general provisions, Title 72, ch. 38.

72-2-532. Events of independent significance. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

History: En. 91A-2-512 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-512; amd. Sec. 29, Ch. 494, L. 1993; Sec. 72-2-313, MCA 1991; redes. 72-2-532 by Code Commissioner, 1993.

72-2-533. Separate writing identifying disposition of tangible personal property. (1) Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money.

(2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the testator's death;

(b) prepared before or after the execution of the will;

(c) altered by the testator after its preparation; and

(d) a writing that has no significance apart from its effect upon the dispositions made by the will.

History: En. 91A-2-513 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-513; amd. Sec. 28, Ch. 494, L. 1993; Sec. 72-2-312, MCA 1991; redes. 72-2-533 by Code Commissioner, 1993.

72-2-534. Contracts concerning succession. (1) A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after July 1, 1975, may be established only by:

(a) provisions of a will stating material provisions of the contract;

(b) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) a writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: En. 91A-2-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-701; amd. Sec. 9, Ch. 494, L. 1993; Sec. 72-2-105, MCA 1991; redes. 72-2-534 by Code Commissioner, 1993.

Cross-References

Circumstances surrounding execution of contract, 1-4-102, 1-4-109.

General rules of interpretation of contracts, Title 28, ch. 3, part 2.

72-2-535. Deposit of will with court in testator's lifetime. A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that person on request or the court may deliver the will to the appropriate court.

History: En. 91A-2-901 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-901; amd. Sec. 36, Ch. 494, L. 1993; Sec. 72-2-402, MCA 1991; redes. 72-2-535 by Code Commissioner, 1993.

72-2-536. Duty of custodian of will — liability. After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court. A person who willfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

History: En. 91A-2-902 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-902; amd. Sec. 35, Ch. 494, L. 1993; Sec. 72-2-401, MCA 1991; redes. 72-2-536 by Code Commissioner, 1993.

Cross-References

Power to punish for contempt, 3-1-403.

Contempts, Title 3, ch. 1, part 5.

72-2-537. Penalty clause for contest. A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: En. 91A-3-905 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-905; amd. Sec. 46, Ch. 494, L. 1993; Sec. 72-2-519, MCA 1991; redes. 72-2-537 by Code Commissioner, 1993.

Part 6
Rules of Construction Applicable Only to Wills

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

72-2-601. Renumbered 72-2-331. Code Commissioner, 1993.

72-2-602. Renumbered 72-2-332. Code Commissioner, 1993.

72-2-603 through 72-2-610 reserved.

72-2-611. Scope. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

History: En. Sec. 47, Ch. 494, L. 1993.

72-2-612. Will may pass all property and after-acquired property. A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

History: En. 91A-2-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-604; amd. Sec. 37, Ch. 494, L. 1993; Sec. 72-2-502, MCA 1991; redes. 72-2-612 by Code Commissioner, 1993.

72-2-613. Antilapse — deceased devisee — class gifts. (1) As used in this section, the following definitions apply:

(a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of the will may take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under the:

(i) rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(ii) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.

(d) "Descendants", as used in the phrase "surviving descendants" of a deceased devisee or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will.

(e) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(f) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

(g) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

(h) "Surviving", in the phrase "surviving devisees" or "surviving decendants" means devisees or descendants who neither predeceased the testator nor are deemed to have predeceased the testator under 72-2-712.

(i) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this section, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise if:

(i) the alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or

(ii) the alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

History: En. 91A-2-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-605; amd. Sec. 39, Ch. 494, L. 1993; Sec. 72-2-512, MCA 1991; redes. 72-2-613 by Code Commissioner, 1993; amd. Sec. 14, Ch. 592, L. 1995; amd. Sec. 30, Ch. 313, L. 2019.

72-2-614. Failure of testamentary provision. (1) Except as provided in 72-2-613, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) Except as provided in 72-2-613, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

History: En. 91A-2-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-606; amd. Sec. 40, Ch. 494, L. 1993; Sec. 72-2-513, MCA 1991; redes. 72-2-614 by Code Commissioner, 1993.

72-2-615. Increase in securities — accessions. (1) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and if the securities are of any of the following types:

(a) securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;

(b) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or

(c) securities of the same organization acquired as a result of a plan of reinvestment.

(2) Distributions in cash before death with respect to a described security are not part of the devise.

History: En. 91A-2-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-607; amd. Sec. 7, Ch. 582, L. 1989; amd. Sec. 44, Ch. 494, L. 1993; Sec. 72-2-517, MCA 1991; redes. 72-2-615 by Code Commissioner, 1993.

Cross-References

Investment securities — transfer, Title 30, ch. 8, part 3.

Securities regulation, Title 30, ch. 10.

72-2-616. Nonademption of specific devises — unpaid proceeds of sale, condemnation, or insurance — sale by conservator or agent. (1) A specific devisee has the right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) if not covered by subsections (1)(a) through (1)(e), a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

(2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds, or recovery for an injury to property is paid to a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of the specific devisee under subsection (2) is reduced by any right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

(a) "incapacitated principal" means a principal who is an incapacitated person;

(b) no adjudication of incapacity before death is necessary; and

(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

History: En. 91A-2-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-608; amd. Sec. 6, Ch. 582, L. 1989; amd. Sec. 43, Ch. 494, L. 1993; Sec. 72-2-516, MCA 1991; redes. 72-2-616 by Code Commissioner, 1993; amd. Sec. 31, Ch. 313, L. 2019.

72-2-617. Nonexoneration. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

History: **En. 91A-2-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-609; amd. Sec. 41, Ch. 494, L. 1993; Sec. 72-2-514, MCA 1991; redes. 72-2-617 by Code Commissioner, 1993.**

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9A.
Mortgages, Pledges, and Liens, Title 71.

72-2-618. Repealed. Sec. 40, Ch. 293, L. 2015.

History: **En. 91A-2-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-610; amd. Sec. 45, Ch. 494, L. 1993; Sec. 72-2-518, MCA 1991; redes. 72-2-618 by Code Commissioner, 1993.**

72-2-619. Ademption by satisfaction. (1) Property that a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part only if:

(a) the will provides for deduction of the gift;

(b) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

(c) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying 72-2-613 and 72-2-614, unless the testator's contemporaneous writing provides otherwise.

History: **En. 91A-2-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-612; amd. Sec. 42, Ch. 494, L. 1993; Sec. 72-2-515, MCA 1991; redes. 72-2-619 by Code Commissioner, 1993.**

Part 7
Rules of Construction Applicable to Wills and Other Governing Instruments

72-2-701. Renumbered 72-2-122. Code Commissioner, 1993.

72-2-702. Renumbered 72-2-221. Code Commissioner, 1993.

72-2-703. Renumbered 72-2-223. Code Commissioner, 1993.

72-2-704. Renumbered 72-2-226. Code Commissioner, 1993.

72-2-705. Renumbered 72-2-222. Code Commissioner, 1993.

72-2-706. Renumbered 72-2-227. Code Commissioner, 1993.

72-2-707. Renumbered 72-2-225. Code Commissioner, 1993.

72-2-708 through 72-2-710 reserved.

72-2-711. Scope. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

History: **En. Sec. 61, Ch. 494, L. 1993.**

72-2-712. Requirement of survival by 120 hours. (1) For the purposes of chapters 1 through 5, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. However, survival of the event or the specified period must be established by clear and convincing evidence.

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and convincing evidence; or

(d) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. However, survival must be established by clear and convincing evidence.

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(6) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

History: En. Sec. 62, Ch. 494, L. 1993; amd. Sec. 15, Ch. 592, L. 1995; amd. Sec. 32, Ch. 313, L. 2019.

72-2-713. Choice of law as to meaning and effect of governing instrument. The meaning and legal effect of a governing instrument is determined by the local law of the state selected by the transferor in the governing instrument unless the application of that law is contrary to the provisions relating to the elective share described in part 7, the provisions relating to exempt property and allowances described in part 8, or any other public policy of this state otherwise applicable to the disposition.

History: En. 91A-2-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-602; amd. Sec. 38, Ch. 494, L. 1993; Sec. 72-2-504, MCA 1991; redes. 72-2-713 by Code Commissioner, 1993.

72-2-714. Repealed. Sec. 40, Ch. 293, L. 2015.

History: En. Sec. 63, Ch. 494, L. 1993.

72-2-715. Class gifts construed to accord with intestate succession. (1) Adopted individuals and individuals born out of wedlock and their respective descendants if appropriate to the class are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(2) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

History: En. Sec. 64, Ch. 494, L. 1993.

72-2-716. Life insurance — retirement plan — account with POD designation — transfer-on-death registration — deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a descendant of a grandparent of the decedent under the:

(i) rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift; or

(ii) rules for intestate succession if the beneficiary designation is not in the form of a class gift.

(f) "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the beneficiary designation.

(g) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

(h) "Surviving" in the phrase or "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the decedent nor are deemed to have predeceased the decedent under 72-2-712.

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative beneficiary designation if:

(i) the alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or

(ii) the alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(5) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

History: **En. Sec. 65, Ch. 494, L. 1993; amd. Sec. 16, Ch. 592, L. 1995; amd. Sec. 33, Ch. 313, L. 2019.**

Cross-References

Life insurance, Title 33, ch. 20.

72-2-717. Survivorship with respect to future interests under terms of trust — substitute takers. (1) As used in this section, the following definitions apply:

(a) "Alternative future interest" means an expressly created future interest that may take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(d) "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.

(e) "Distribution date" with respect to a future interest means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

(f) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(g) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

(h) "Surviving" in the phrase "surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants who neither predeceased the distribution date nor are deemed to have predeceased the distribution date under 72-2-712.

(2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative future interest if:

(i) the alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or

(ii) the alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(iii) "Younger-generation future interest" means a future interest that:

(A) is to a descendant of a beneficiary of the primary future interest;

(B) is an alternative future interest with respect to the primary future interest;

(C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under 72-2-721.

(5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) if no taker is produced by the application of subsection (5)(a), the property passes as provided in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

History: **En. Sec. 66, Ch. 494, L. 1993; amd. Sec. 17, Ch. 592, L. 1995; amd. Sec. 34, Ch. 313, L. 2019.**

72-2-718. Class gifts to "descendants", "issue", or "heirs of the body" — form of distribution if none specified. If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in such shares as they would receive under the applicable law of intestate succession if the designated ancestor had then died intestate owning the subject matter of the class gift.

History: **En. Sec. 67, Ch. 494, L. 1993.**

72-2-719. Representation — per capita at each generation — per stirpes. (1) As used in this section, the following definitions apply:

(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is considered to have predeceased the distribution date under 72-2-712.

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under 72-2-712.

(2) (a) If a governing instrument calls for property to be distributed "per capita at each generation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) (a) If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are:

(i) surviving children of the designated ancestor; and

(ii) deceased children who left surviving descendants.

(b) Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) (a) If an applicable statute or a governing instrument calls for property to be distributed "by representation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(5) For the purposes of subsections (2) through (4), an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

History: En. Sec. 68, Ch. 494, L. 1993; amd. Sec. 18, Ch. 592, L. 1995.

72-2-720. Worthier title doctrine abolished. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family" or language of similar import does not create or presumptively create a reversionary interest in the transferor.

History: En. Sec. 69, Ch. 494, L. 1993.

72-2-721. Interests in "heirs" and like. If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons, including the state, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if the designated individual died at that time. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

History: En. Sec. 70, Ch. 494, L. 1993; amd. Sec. 19, Ch. 592, L. 1995.

Part 8
General Provisions Concerning Probate and Nonprobate Transfers

72-2-801. Renumbered 72-2-412. Code Commissioner, 1993.

72-2-802. Renumbered 72-2-413. Code Commissioner, 1993.

72-2-803. Renumbered 72-2-414. Code Commissioner, 1993.

72-2-804. Renumbered 72-2-415. Code Commissioner, 1993.

72-2-805 through 72-2-810 reserved.

72-2-811. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-2-801 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-801; amd. Sec. 1, Ch. 52, L. 1981; amd. Sec. 1, Ch. 511, L. 1983; amd. Sec. 5, Ch. 494, L. 1993; Sec. 72-2-101, MCA 1991; redes. 72-2-811 by Code Commissioner, 1993; amd. Sec. 20, Ch. 592, L. 1995; amd. Sec. 4, Ch. 290, L. 1999.

72-2-812. Effect of divorce, annulment, or decree of separation. (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of chapter 2, parts 1 through 4, and of 72-3-501 through 72-3-508, a surviving spouse does not include:

(a) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;

(b) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(c) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

History: En. 91A-2-802 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-802; amd. Sec. 7, Ch. 494, L. 1993; Sec. 72-2-103, MCA 1991; redes. 72-2-812 by Code Commissioner, 1993.

Cross-References

Declaration of invalidity of marriage, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

72-2-813. Effect of financial exploitation or homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Abuser" means a person who participates in the willful and unlawful financial exploitation of a vulnerable adult.

(b) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(c) "Financial exploitation" means the act of purposely or knowingly standing in a position of trust and confidence with a vulnerable adult and obtaining, using, or attempting to obtain or use at least $1,000, whether in one or more acts, of a vulnerable adult's money, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the money, assets, or property or to benefit someone other than the vulnerable adult. Financial exploitation may include but is not limited to:

(i) acting or failing to act, including through the use of a power of attorney, guardianship, or conservatorship of a vulnerable adult, in order to:

(A) obtain control through deception, intimidation, fraud, menace, or undue influence over a vulnerable adult's money, assets, or property to deprive the vulnerable adult of the ownership, use, benefit, or possession of the money, assets, or property; or

(B) convert money, assets, or property of a vulnerable adult to deprive the vulnerable adult of the ownership, use, benefit, or possession of the money, assets, or property;

(ii) misappropriating or misusing money belonging to a vulnerable adult from a personal or joint account; or

(iii) failing to use a vulnerable adult's income and assets to provide the necessities required for the vulnerable adult's support and maintenance.

(d) "Governing instrument" means a governing instrument executed by the decedent.

(e) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the abuser or killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's abuser or killer and whether or not the decedent then had capacity to exercise the power.

(f) "Vulnerable adult" means a person who is:
(i) 60 years of age or older;
(ii) functionally, mentally, or physically unable to provide self-care;
(iii) deemed incapacitated under 72-5-316;
(iv) developmentally disabled;
(v) admitted to a facility licensed by the department of public health and human services;
(vi) receiving services from a home health agency or hospice provider;
(vii) receiving services from an individual provider; or
(viii) self-directing care and receiving services from a personal aide for a physical disability.

(2) An individual who financially exploits or feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the abuser or killer disclaimed the abuser's or killer's intestate share.

(3) The financial exploitation or felonious and intentional killing of the decedent:
(a) revokes any revocable:
(i) disposition or appointment of property made by the decedent to the abuser or killer in a governing instrument;
(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the abuser or killer; and
(iii) nomination of the abuser or killer in a governing instrument, nominating or appointing the abuser or killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and
(b) severs the interests of the decedent and the abuser or killer in property held by them at the time of the financial exploitation or killing as joint tenants with the right of survivorship and transforms the interests of the decedent and the abuser or killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the abuser or killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records that are appropriate to the kind and location of the property and that are relied on as evidence of ownership in the ordinary course of transactions involving such property.

(5) Provisions of a governing instrument are given effect as if the abuser or killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the abuser or killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by an abuser or killer not covered by this section must be treated in accordance with the principle that an abuser or killer cannot profit from the abuser's or killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the financial exploitation or felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's abuser or killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the financial exploitation or felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the financial exploitation or felonious and intentional killing of the decedent, the determination conclusively establishes the individual as the decedent's abuser or killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by financial exploitation or an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's

participation in a homicide. A payor or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of financial exploitation or to seek any evidence with respect to financial exploitation even if the circumstances are suspicious or questionable as to the beneficiary's participation in financial exploitation. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of the service is that described in subsection (8)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served on the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(9) (a) A bona fide purchaser who purchases property or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103.

History: En. 91A-2-803 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-803; amd. Sec. 3, Ch. 582, L. 1989; amd. Sec. 8, Ch. 494, L. 1993; Sec. 72-2-104, MCA 1991; redes. 72-2-813 by Code Commissioner, 1993; amd. Sec. 21, Ch. 592, L. 1995; amd. Sec. 1, Ch. 312, L. 2019; amd. Sec. 35, Ch. 313, L. 2019.

Cross-References

Own wrong — no advantage, 1-3-208.

Limitations on payment of retirement benefits if beneficiary causes member's death, 19-2-804.

Illegal occupation, 33-22-230.

Homicide, Title 45, ch. 5, part 1.
Definitions — governing instrument includes insurance or annuity policy, 72-1-103.
Constructive trust, 72-38-123.

72-2-814. Revocation of probate and nonprobate transfers by divorce — no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as to a retirement system established in Title 19 or as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person or who receives from a former spouse, relative of a former spouse, or any other person for value and without notice a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(9) The provisions of this section apply to testate and intestate estates, and in the event of a conflict between the provisions of this section and those provided in chapters 1 through 5 and chapter 16, part 6, of this title, the provisions of this section control. This subsection does not apply if a divorced individual designates a former spouse as personal representative of the estate subsequent to the divorce.

History: En. Sec. 71, Ch. 494, L. 1993; amd. Sec. 22, Ch. 592, L. 1995; amd. Sec. 96, Ch. 562, L. 1999; amd. Sec. 1, Ch. 228, L. 2017; amd. Sec. 36, Ch. 313, L. 2019.

Cross-References

Dissolution of marriage, Title 40, ch. 4, part 1.

72-2-815. Reformation to correct mistakes. The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

History: En. Sec. 37, Ch. 313, L. 2019.

72-2-816. Modification to achieve transferor's tax objectives. To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

History: En. Sec. 38, Ch. 313, L. 2019.

72-2-817. Short title. Sections 72-2-817 through 72-2-833 may be cited as the "Uniform Disclaimer of Property Interests Act".

History: En. Sec. 39, Ch. 313, L. 2019.

72-2-818. Definitions. As used in 72-2-817 through 72-2-833, the following definitions apply:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(8) "Trust" means:

(a) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(b) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

History: En. Sec. 40, Ch. 313, L. 2019.

72-2-819. Scope. Sections 72-2-817 through 72-2-833 apply to disclaimers of any interest in or power over property, whenever created.

History: En. Sec. 41, Ch. 313, L. 2019.

72-2-820. Sections supplemented by other law. (1) Unless displaced by a provision of 72-2-817 through 72-2-833, the principles of law and equity supplement 72-2-817 through 72-2-833.

(2) Sections 72-2-817 through 72-2-833 do not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than 72-2-817 through 72-2-833.

History: **En. Sec. 42, Ch. 313, L. 2019.**

72-2-821. Power to disclaim — general requirements — when revocable. (1) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(2) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(3) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in 72-2-828. In this subsection:

(a) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(b) "signed" means, with present intent to authenticate or adopt a record, to:

(i) execute or adopt a tangible symbol; or

(ii) attach to or logically associate with the record an electronic sound, symbol, or process.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(5) A disclaimer becomes irrevocable when it is delivered or filed pursuant to 72-2-828 or when it becomes effective as provided in 72-2-822 through 72-2-827, whichever occurs later.

(6) A disclaimer made under 72-2-817 through 72-2-833 is not a transfer, assignment, or release.

History: **En. Sec. 43, Ch. 313, L. 2019.**

72-2-822. Disclaimer of interest in property. (1) In this section:

(a) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) Except for a disclaimer governed by 72-2-823 or 72-2-824, the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(c) If the instrument does not contain a provision described in subsection (2)(b), the following rules apply:

(i) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(ii) If the disclaimant is an individual, except as otherwise provided in subsections (2)(c)(iii) and (2)(c)(iv), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(iii) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(iv) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(d) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

History: **En. Sec. 44, Ch. 313, L. 2019.**

72-2-823. Disclaimer of rights of survivorship in jointly held property. (1) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(a) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(b) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(2) A disclaimer under subsection (1) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(3) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

History: **En. Sec. 45, Ch. 313, L. 2019.**

72-2-824. Disclaimer of interest by trustee. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

History: **En. Sec. 46, Ch. 313, L. 2019.**

72-2-825. Disclaimer of power of appointment or other power not held in fiduciary capacity. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

History: **En. Sec. 47, Ch. 313, L. 2019.**

72-2-826. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. (1) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(2) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

History: **En. Sec. 48, Ch. 313, L. 2019.**

72-2-827. Disclaimer of power held in fiduciary capacity. (1) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(3) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

History: **En. Sec. 49, Ch. 313, L. 2019.**

72-2-828. Delivery or filing. (1) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(a) an annuity or insurance policy;
(b) an account with a designation for payment on death;
(c) a security registered in beneficiary form;
(d) a pension, profit-sharing, retirement, or other employment-related benefit plan; or
(e) any other nonprobate transfer at death.

(2) Subject to subsections (3) through (12), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(3) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(a) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(b) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(4) In the case of an interest in a testamentary trust:

(a) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(b) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(5) In the case of an interest in an inter vivos trust:

(a) a disclaimer must be delivered to the trustee then serving;

(b) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(c) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(6) In the case of an interest created by a beneficiary designation which is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(7) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:

(a) the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(b) the disclaimer of an interest in real property must be recorded in the office of the county recorder of the county where the real property that is the subject of the disclaimer is located.

(8) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(9) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(a) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(10) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(a) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (3), (4), or (5), as if the power disclaimed were an interest in property.

(12) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

History: En. Sec. 50, Ch. 313, L. 2019.

72-2-829. When disclaimer barred or limited. (1) A disclaimer is barred by a written waiver of the right to disclaim.

(2) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(a) the disclaimant accepts the interest sought to be disclaimed;

(b) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(c) a judicial sale of the interest sought to be disclaimed occurs.

(3) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(4) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(5) A disclaimer is barred or limited if so provided by law other than 72-2-817 through 72-2-833.

(6) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under 72-2-817 through 72-2-833 had the disclaimer not been barred.

History: En. Sec. 51, Ch. 313, L. 2019.

72-2-830. Tax qualified disclaimer. Notwithstanding any other provision of 72-2-817 through 72-2-833, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under 72-2-817 through 72-2-833.

History: En. Sec. 52, Ch. 313, L. 2019.

72-2-831. Recording of disclaimer. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in 72-2-828(7)(b), failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

History: En. Sec. 53, Ch. 313, L. 2019.

72-2-832. Application to existing relationships. Except as otherwise provided in 72-2-829, an interest in or power over property existing on October 1, 2019, as to which the time for delivering or filing a disclaimer under law superseded by 72-2-817 through 72-2-833 has not expired may be disclaimed after October 1, 2019.

History: En. Sec. 54, Ch. 313, L. 2019.

72-2-833. Relation to electronic signatures in global and national commerce act. Sections 72-2-817 through 72-2-833 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.) but do not modify, limit, or supersede section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. 7003(b)).

History: En. Sec. 55, Ch. 313, L. 2019.

Part 9
Uniform International Will Act

72-2-901. Definitions. In this part, the following definitions apply:

(1) "Authorized person" and "person authorized to act in connection with international wills" means a person who by 72-2-908 or by the laws of the United States, including members

of the diplomatic and consular service of the United States designated by the foreign service regulations, is empowered to supervise the execution of international wills.

(2) "International will" means a will executed in conformity with 72-2-902 through 72-2-905.

History: **En. Sec. 1, Ch. 62, L. 1991.**

72-2-902. Validity. (1) The form of a will is valid, regardless of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this part.

(2) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(3) This part does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

History: **En. Sec. 2, Ch. 62, L. 1991.**

72-2-903. Requirements. (1) An international will must be made in writing. It need not be personally written by the testator. It may be written in any language, by hand, or by any other means.

(2) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the testator's will and that the testator knows the contents of the will. The testator need not inform the witnesses or the authorized person of the contents of the will.

(3) In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the testator's signature.

(4) If the testator is unable to sign, the absence of the testator's signature does not affect the validity of the international will if the testator indicates the reason for the testator's inability to sign and the authorized person makes note of the inability on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for the testator if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for the testator.

(5) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

History: **En. Sec. 3, Ch. 62, L. 1991; amd. Sec. 2310, Ch. 56, L. 2009.**

72-2-904. Other points of form. (1) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if the testator is unable to sign, by the person signing on the testator's behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(2) The date of the will must be the date of its signature by the authorized person.

(3) The authorized person shall ask the testator whether the testator wished to make a declaration concerning the safekeeping of the testator's will. If so and at the express request of the testator, the place where the testator intends to have the will kept must be mentioned in the certificate provided for in 72-2-905.

(4) A will executed in compliance with 72-2-903 is not invalid merely because it does not comply with this section.

History: **En. Sec. 4, Ch. 62, L. 1991; amd. Sec. 2311, Ch. 56, L. 2009.**

72-2-905. Certificate. The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of this part for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE

(Convention of October 26, 1973)

I, ____________ (name, address, and capacity), a person authorized to act in connection with international wills, certify that on _________ (date) at ___________ (place) (testator) ______________ (name, address, date, and place of birth) in my presence and that of the witnesses

(a) _____________ (name, address, date, and place of birth)

(b) _____________ (name, address, date, and place of birth) has declared that the attached document is the testator's will and that the testator knows the contents of the will.

I furthermore certify that:

(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged the testator's signature previously affixed;

(2) following a declaration of the testator stating that the testator was unable to sign the will for the following reason _______________, I have mentioned this declaration on the will, and the signature has been affixed by ______________ (name and address);

(b) the witnesses and I have signed the will;

*(c) each page of the will has been signed by ____________ and numbered;

(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

*(f) the testator has requested me to include the following statement concerning the safekeeping of the will:

PLACE OF EXECUTION
DATE
SIGNATURE and, if necessary, SEAL

* to be completed if appropriate

History: En. Sec. 5, Ch. 62, L. 1991; amd. Sec. 2312, Ch. 56, L. 2009.

72-2-906. Effect of certificate. In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this part. The absence or irregularity of a certificate does not affect the formal validity of a will under this part.

History: En. Sec. 6, Ch. 62, L. 1991.

72-2-907. Revocation. An international will is subject to the ordinary rules of revocation of wills.

History: En. Sec. 7, Ch. 62, L. 1991.

72-2-908. Persons authorized to act in relation to international will — eligibility — recognition by authorizing agency. Individuals who have been admitted to practice law before the courts of this state and are currently licensed are authorized persons in relation to international wills.

History: En. Sec. 9, Ch. 62, L. 1991.

72-2-909. International will information registration. The secretary of state shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or individual-identifying number established by law, address, and date and place of birth of the testator and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The secretary of state, at the request of the authorized person, may cause the information that the secretary of state receives about the execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator if that other registry system adheres to rules protecting the confidentiality of the information similar to those established in this state.

History: En. Sec. 10, Ch. 62, L. 1991; amd. Sec. 2313, Ch. 56, L. 2009.

72-2-910. Source and construction. Sections 72-2-901 through 72-2-907 derive from the Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this part, regard must be given to its international origin and to the need for uniformity in its interpretation.

History: **En. Sec. 8, Ch. 62, L. 1991.**

Part 10
Uniform Statutory Rule Against Perpetuities — Honorary Trusts

Part Cross-References

Perpetuities, Art. XIII, sec. 6, Mont. Const.

72-2-1001. Short title. This part may be cited as the "Uniform Statutory Rule Against Perpetuities".

History: **En. Sec. 1, Ch. 250, L. 1989; Sec. 70-1-801, MCA 1991; redes. 72-2-1001 by Code Commissioner, 1993.**

72-2-1002. Statutory rule against perpetuities. (1) A nonvested property interest is invalid unless:

(a) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) the interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(b) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, a clause in a governing instrument purports to postpone the vesting or termination of any interest or trust until, purports to disallow the vesting or termination of any interest or trust beyond, purports to require all interests or trusts to vest or terminate no later than, or operates in any similar fashion upon the later of:

(a) the expiration of a period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement; or

(b) the death of, or the expiration of a period not exceeding 21 years after the death of, the survivor of specified lives in being at the creation of the trust or other property arrangement, then the portion of the clause pertaining to the period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement must be disregarded, and the clause operates upon the death of, or upon the expiration of the period not exceeding 21 years after the death of, the survivor of the specified lives in being at the creation of the trust or other property arrangement.

History: **En. Sec. 2, Ch. 250, L. 1989; amd. Sec. 1, Ch. 26, L. 1991; Sec. 70-1-802, MCA 1991; redes. 72-2-1002 by Code Commissioner, 1993.**

72-2-1003. When nonvested property interest or power of appointment created. (1) Except as provided in 72-2-1005 and subsections (2) and (3) of this section, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property

interest or a property interest subject to a power of appointment described in 72-2-1002(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this part, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

History: En. Sec. 3, Ch. 250, L. 1989; Sec. 70-1-803, MCA 1991; redes. 72-2-1003 by Code Commissioner, 1993.

72-2-1004. Reformation. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the 90 years allowed by 72-2-1002(1)(b), (2)(b), or (3)(b) if:

(1) a nonvested property interest or a power of appointment becomes invalid under 72-2-1002;

(2) a class gift is not but might become invalid under 72-2-1002 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by 72-2-1002(1)(a) can vest but not within 90 years after its creation.

History: En. Sec. 4, Ch. 250, L. 1989; Sec. 70-1-804, MCA 1991; redes. 72-2-1004 by Code Commissioner, 1993.

72-2-1005. Exclusions from statutory rule against perpetuities. Section 72-2-1002 does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a:

(a) premarital or postmarital agreement;

(b) separation or divorce settlement;

(c) spouse's election;

(d) similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(e) contract to make or not to revoke a will or trust;

(f) contract to exercise or not to exercise a power of appointment;

(g) transfer in satisfaction of a duty of support; or

(h) reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) the power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees or independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

History: En. Sec. 5, Ch. 250, L. 1989; Sec. 70-1-805, MCA 1991; redes. 72-2-1005 by Code Commissioner, 1993.

72-2-1006. Prospective application. (1) Except as extended by subsection (2), this part applies to a nonvested property interest or a power of appointment created on or after October

1, 1989. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before October 1, 1989, and is determined in a judicial proceeding commenced on or after October 1, 1989, to violate this state's rule against perpetuities as that rule existed before October 1, 1989, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History: En. Sec. 6, Ch. 250, L. 1989; Sec. 70-1-806, MCA 1991; redes. 72-2-1006 by Code Commissioner, 1993.

72-2-1007. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

History: En. Sec. 7, Ch. 250, L. 1989; Sec. 70-1-807, MCA 1991; redes. 72-2-1007 by Code Commissioner, 1993.

72-2-1008 through 72-2-1016 reserved.

72-2-1017. Honorary trusts — trusts for pets. (1) Subject to subsection (3), a trust may be performed by the trustee for 21 years but no longer, whether or not the terms of the trust contemplate a longer duration if:

(a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee; and

(b) there is no definite or definitely ascertainable beneficiary designated.

(2) Subject to the provisions of subsection (3) and this subsection, a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of subsection (3)(b)(i) or (3)(b)(ii), to the transferor's heirs under 72-2-721.

(c) For the purposes of 72-2-717, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

(e) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (3)(b).

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

History: En. Sec. 72, Ch. 494, L. 1993; amd. Sec. 23, Ch. 592, L. 1995.

Cross-References

Trusts, Title 72, ch. 38.

CHAPTER 3
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Part 1
General Provisions

72-3-101. Devolution of estate at death — restrictions. (1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to the person's property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, the decedent's real and personal property devolves to the persons to whom it is devised by the decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to the decedent's heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

History: En. 91A-3-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-101; amd. Sec. 2314, Ch. 56, L. 2009.

72-3-102. Necessity of order of probate of will. Except as provided in 72-3-1101, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk or an adjudication of probate by the court.

History: En. 91A-3-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-102; amd. Sec. 24, Ch. 592, L. 1995; amd. Sec. 56, Ch. 313, L. 2019.

72-3-103. Necessity of appointment for administration. Except as otherwise provided in chapter 4, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or clerk, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

History: En. 91A-3-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-103.

72-3-104. Claims against decedent — necessity of administration. (1) A proceeding to enforce a claim against the estate of a decedent or the decedent's successors may not be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by Title 72, chapter 3, parts 1 through 10, and 72-3-1101 through 72-3-1103. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in 72-3-1012 or from a former personal representative individually liable as provided in 72-3-1014.

(2) This section has no application to a proceeding by a secured creditor of the decedent to enforce the secured creditor's right to security except as to any deficiency judgment that might be sought in the proceeding.

History: En. 91A-3-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-104; amd. Sec. 93, Ch. 51, L. 1999.

72-3-105. Interested persons' rights of application and petition. Persons interested in decedent's estate may apply to the clerk for determination in the informal proceedings provided in chapter 3, part 2, and may petition the court for orders in formal proceedings within the court's jurisdiction, including but not limited to those described in chapter 3, parts 3 and 4.

History: En. 91A-3-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-105(part).

72-3-106. Interested person's right to demand notice of order or filing. (1) A person desiring notice of an order or filing pertaining to a decedent's estate in which the person has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent stating:

(a) the name of the decedent;

(b) the nature of the demandant's interest in the estate; and

(c) the demandant's address or that of the demandant's attorney.

(2) The clerk shall mail a copy of the demand to the personal representative if one has been appointed.

(3) After filing of a demand, an order or filing to which the demand relates may not be made or accepted without notice as prescribed in 72-1-301 to the demandant or the demandant's attorney. The validity of an order that is issued or filing that is accepted without compliance with this requirement may not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice.

(4) The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and must cease upon the termination of the demandant's interest in the estate.

History: En. 91A-3-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-204; amd. Sec. 2315, Ch. 56, L. 2009.

72-3-107 and 72-3-108 reserved.

72-3-109. Acknowledgment of fiduciary relationship and obligations — personal representative, guardian, or conservator. (1) Every applicant for appointment as the personal representative of a decedent's estate, as a guardian, or as a conservator shall sign and verify before a notary public or under penalty of perjury the following statement:

"By signing, accepting, or acting under this appointment, I acknowledge that I will assume the duties and responsibilities of a fiduciary and that I must work exclusively for the benefit of the decedent's estate and its beneficiaries, the ward under any guardianship, or the protected person under any conservatorship. I also acknowledge that the primary duty of a personal representative, guardian, or conservator is the duty of loyalty to and protection of the best interests of the estate, ward, or protected person. Therefore, I acknowledge that:

I may not use any of the property or other assets of the decedent's estate, ward, or protected person for my own personal benefit;

I must direct any benefit derived from this appointment to the decedent's estate, ward, or protected person; and

I must avoid conflicts of interest and must use ordinary skill and prudence in carrying out the duties of this appointment."

(2) The statement in subsection (1) must be sworn before a notary public or executed under penalty of perjury in the following format:

"I declare under penalty of perjury under the laws of the state of Montana that the foregoing is true and correct.

Signed this ... day of ...., 20....

....

Signature of applicant"

(3) This section applies to all applications for appointment as a personal representative or as a special administrator under Title 72, chapter 3, parts 2, 3, 4, and 7.

History: En. Sec. 8, Ch. 238, L. 2011.

72-3-110 reserved.

72-3-111. Exclusive jurisdiction of court — binding nature of orders after notice. (1) The district court has exclusive jurisdiction of all probate matters.

(2) In proceedings within the exclusive jurisdiction of the court where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with 72-1-301. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

History: En. 91A-3-105, 91A-3-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-105(part), 91A-3-106.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Trusts — subject matter jurisdiction, 72-38-201.

72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had the decedent's domicile at the time of death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

History: En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-201(1) thru (3); amd. Sec. 2316, Ch. 56, L. 2009; amd. Sec. 57, Ch. 313, L. 2019.

Cross-References

Venue, Title 25, ch. 2.

72-3-113. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-201(4).

72-3-114. Conflicting claim as to domicile in another state. If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

History: En. 91A-3-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-202.

72-3-115 through 72-3-120 reserved.

72-3-121. Scope of proceedings when no supervised administration — proceedings independent — combination of proceedings. Unless supervised administration as described in chapter 3, part 4, is involved:

(1) each proceeding before the court or clerk is independent of any other proceeding involving the same estate;

(2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.

(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

History: En. 91A-3-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-107.

72-3-122. Time limit on probate, testacy, and appointment proceedings — exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

(d) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter, if no proceedings concerning the succession or estate administration have occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

(e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under subsection (1)(a) or (1)(b), the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

History: En. 91A-3-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-108; amd. Sec. 9, Ch. 582, L. 1989; amd. Sec. 25, Ch. 592, L. 1995; amd. Sec. 58, Ch. 313, L. 2019.

72-3-123. Statutes of limitation on decedent's cause of action — applicability. A statute of limitation running on a cause of action belonging to a decedent, which had not been barred as of the date of the decedent's death, may not apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action that, but for this section, would have been barred less than 4 months after death is barred after 4 months unless tolled.

History: En. 91A-3-109 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-109; amd. Sec. 2317, Ch. 56, L. 2009.

Cross-References

Statutes of limitations, Title 27, ch. 2.

Actions involving personal property accruing after death and before issuance of letters of administration, 27-2-304.

72-3-124 through 72-3-130 reserved.

72-3-131. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons. (1) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties to the proceeding, including those unborn, unascertained, or who could not be located.

(2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

History: En. 91A-3-1101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1101; amd. Sec. 27, Ch. 592, L. 1995; amd. Sec. 59, Ch. 313, L. 2019.

72-3-132. Procedure for securing court approval of compromise. The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise must be set forth in an agreement in writing which must be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative, if any, or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of any estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise.

(4) Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

History: En. 91A-3-1102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1102; amd. Sec. 28, Ch. 592, L. 1995.

Part 2
Informal Probate and Appointment Proceedings

72-3-201. Applications to be verified. Applications for informal probate or informal appointment must be directed to the clerk and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the information required by 72-3-202 through 72-3-205. By verifying an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the applicant.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(part); amd. Sec. 2318, Ch. 56, L. 2009; amd. Sec. 60, Ch. 313, L. 2019.

72-3-202. Required contents of application. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary, or successor representative, must contain the following:

(1) a statement of the interest of the applicant;

(2) the name and date of death of the decedent, the decedent's age, and the county and state of the decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(5) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere; and

(6) that the time limit for informal probate or appointment as provided in this chapter has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, circumstances as described by 72-3-122 have occurred authorizing tardy probate or appointment.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(1); amd. Sec. 2319, Ch. 56, L. 2009; amd. Sec. 61, Ch. 313, L. 2019.

72-3-203. Probate and appointment under will — additional information required. (1) An application for informal probate of a will must state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application, that an authenticated copy of a will probated in another jurisdiction accompanies the application, or that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in 72-3-220, accompanies the application;

(b) that the applicant to the best of the applicant's knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will.

(2) An application for informal appointment of a personal representative to administer an estate under a will must describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment must adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(2), (3); amd. Sec. 2, Ch. 410, L. 2005; amd. Sec. 62, Ch. 313, L. 2019.

72-3-204. Appointment in intestacy — additional information required. An application for informal appointment of an administrator in intestacy must state in addition to the statements required by 72-3-202:

(1) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under 72-1-201 or a statement why any instrument of which the applicant may be aware is not being probated;

(2) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under 72-3-501 through 72-3-508.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(4); amd. Sec. 2320, Ch. 56, L. 2009.

72-3-205. Application for appointment of successor personal representative. (1) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(2) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in 72-3-525 or whose appointment has been terminated by death or removal shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(5), (6).

72-3-206 through 72-3-210 reserved.

72-3-211. Informal probate — notice requirements. (1) The moving party shall give notice, as described by 72-1-301, of the application for informal probate:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any personal representative of the decedent whose appointment has not been terminated.

(2) No other notice of informal probate is required.

History: En. 91A-3-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-306; amd. Sec. 2321, Ch. 56, L. 2009.

72-3-212. Informal probate — clerk to make findings. In an informal proceeding for original probate of a will, the clerk shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103;

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed, and apparently unrevoked will, an authenticated copy of a will probated in another jurisdiction, or an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in 72-3-220, is in the clerk's possession;

(6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and

(7) it appears from the application that the time limit for original probate has not expired.

History: En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-303(1); amd. Sec. 73, Ch. 494, L. 1993; amd. Sec. 3, Ch. 410, L. 2005.

72-3-213. Rules for grant or denial of informal probate. (1) A will that appears to have the required signatures and that contains an attestation clause showing that requirements of execution under 72-2-522 or 72-2-526 have been met must be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed or may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(2) The application must be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (3), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(4) A will from a place that does not provide for probate of a will after death and that is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate that relates to one or more of a known series of testamentary instruments (other than a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, must be declined.

History: (1) thru (4)En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975; Sec. 91A-3-303, R.C.M. 1947; (5)En. 91A-3-304 by Sec. 1, Ch. 365, L. 1974; Sec. 91A-3-304, R.C.M. 1947; R.C.M. 1947, 91A-3-303(2) thru (5), 91A-3-304; amd. Sec. 10, Ch. 582, L. 1989; amd. Sec. 74, Ch. 494, L. 1993.

72-3-214. Power of clerk to deny informal probate — effect of denial. (1) If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of 72-3-212 and 72-3-213 or any other reason, the clerk may decline the application.

(2) A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

History: En. 91A-3-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-305; amd. Sec. 2322, Ch. 56, L. 2009.

72-3-215. Clerk to issue statement of informal probate — effect — procedural defect not to void probate. (1) Upon receipt of an application requesting informal probate of a will, the clerk, upon making the findings required by 72-3-212 and 72-3-213, shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death.

(2) Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding.

(3) No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

History: En. 91A-3-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-302.

72-3-216 through 72-3-219 reserved.

72-3-220. Nondomiciliary decedent — will filed and not probated in domiciliary state. A will of a nondomiciliary decedent that has been filed and not probated in a court in the domiciliary state may be proved for probate in this state by an authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has been filed and not submitted for probate in the court in the domiciliary state.

History: En. Sec. 1, Ch. 410, L. 2005.

72-3-221. Informal appointment — notice requirements. (1) The moving party shall give notice, as described by 72-1-301, of the party's intention to seek an appointment informally:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required.

History: En. 91A-3-310 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-310; amd. Sec. 2323, Ch. 56, L. 2009.

72-3-222. Informal appointment — clerk to make findings. In informal appointment proceedings, the clerk shall determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103;

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by 72-3-106 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling the person to the appointment.

History: En. 91A-3-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-308(1); amd. Sec. 75, Ch. 494, L. 1993.

72-3-223. Rules for denial of informal appointment. (1) Unless 72-3-523 controls, the application must be denied if it indicates:

(a) that a personal representative who has not filed a written statement of resignation, as provided in 72-3-525, has been appointed in this or another county of this state;

(b) that, unless the applicant is the domiciliary personal representative or the domiciliary personal representative's nominee, the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile; or

(c) that other requirements of 72-3-222 have not been met.

(2) If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument that may relate to property subject to the laws of this state and that is not filed for probate in this court, the clerk shall decline the application.

History: En. 91A-3-308, 91A-3-311 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-308(2), 91A-3-311; amd. Sec. 2324, Ch. 56, L. 2009.

72-3-224. Informal appointment — power of clerk to deny — effect of denial. (1) If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of 72-3-222, 72-3-223, and 72-3-225 or for any other reason, the clerk may decline the application.

(2) A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

History: En. 91A-3-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-309; amd. Sec. 2325, Ch. 56, L. 2009.

72-3-225. Duty of clerk to make appointment — effect. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in 72-3-701, if at least 120 hours have elapsed since the decedent's death, the clerk, after making the findings required by 72-3-222 and 72-3-223, shall appoint the applicant subject to qualification and acceptance. However, if the decedent was a nonresident, the clerk shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that the decedent's estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment and the office of personal representative created by the appointment are subject to termination, as provided in 72-3-521 through 72-3-526, but are not subject to retroactive vacation.

History: En. 91A-3-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-307; amd. Sec. 2326, Ch. 56, L. 2009.

Part 3
Formal Testacy and Appointment Proceedings

72-3-301. Petition for formal testacy or appointment — contents — last will. (1) Petitions for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(a) requests an order as to the testacy of the decedent in relation to a particular instrument that may or may not have been informally probated and determining the heirs;

(b) contains the statements required for informal applications as stated in 72-3-202 and the statements required by 72-3-203(1)(b) and (1)(c); and

(c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is not in the possession of the court or does not accompany the petition, if an authenticated copy of a will probated in another jurisdiction does not accompany the petition, or if an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in 72-3-320, does not accompany the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by 72-3-202 and 72-3-204, and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by 72-3-204(2) may be omitted.

History: En. 91A-3-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-402; amd. Sec. 4, Ch. 410, L. 2005.

72-3-302. Formal testacy proceedings — nature — how and when commenced. (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will.

(2) A formal testacy proceeding may be commenced by an interested person filing a petition:

(a) as described in 72-3-301(1) in which the person requests that the court, after notice and hearing, enter an order probating a will;

(b) to set aside an informal probate of a will or to prevent informal probate of a will that is the subject of a pending application; or

(c) for an order that the decedent died intestate.

(3) A petition may seek formal probate of a will without regard to whether the will or a conflicting will has been informally probated.

(4) A formal testacy proceeding may but need not involve a request for appointment of a personal representative.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part); amd. Sec. 2327, Ch. 56, L. 2009.

Cross-References
Undue influence, 28-2-407.

72-3-303. Formal proceeding supersedes all informal applications. During the pendency of a formal testacy proceeding, the clerk shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

72-3-304. Effect of formal proceeding on power of informally appointed personal representative. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, shall refrain from exercising the personal representative's power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of that office and requesting the appointment of a special administrator. In the absence of a request or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part); amd. Sec. 2328, Ch. 56, L. 2009.

72-3-305. Notice of hearing on petition for formal testacy proceeding. (1) Upon commencement of a formal testacy proceeding, the court or clerk shall fix a time and place of hearing.

(2) Notice shall be given in the manner prescribed by 72-1-301 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under 72-3-106 of this code. Notice shall be given to the following persons:

(a) the surviving spouse, children, and other heirs of the decedent;

(b) the devisees and executors named in any will that is being or has been probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere; and

(c) any personal representative of the decedent whose appointment has not been terminated.

(3) In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(4) Notice may be given to other persons.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-403(1).

72-3-306. Notice and procedure when fact of death in doubt. (1) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt or on the written demand of any interested person, a copy of the notice of the hearing on the petition must be sent by certified mail to the alleged decedent at the alleged decedent's last-known address. The court shall direct the petitioner to report the results of or make and report back concerning a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any of the following methods:

(a) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator.

(2) The costs of any search must be paid by the petitioner if there is no administration or by the estate of the decedent if there is administration.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-403(2); amd. Sec. 2329, Ch. 56, L. 2009.

72-3-307. Hearings and proof in uncontested cases. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of 72-3-313 and 72-3-316 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

History: En. 91A-3-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-405.

72-3-308. Written objections to probate. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in the pleadings the party's objections to probate of the will.

History: En. 91A-3-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-404; amd. Sec. 2330, Ch. 56, L. 2009.

72-3-309. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-3-406 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-406; amd. Sec. 2, Ch. 6, L. 1979.

72-3-310. Burdens in contested cases. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof.

History: **En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-407(part).**

Cross-References

Duress, 28-2-402.
Kinds of fraud, 28-2-404 through 28-2-406.
Undue influence, 28-2-407.
Kinds of mistake, 28-2-408 through 28-2-411.

72-3-311. Priority of determinations in contested cases. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

History: **En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-407(part).**

72-3-312. Effect of final order in another state. A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes or is based upon a finding that the decedent was domiciled at the decedent's death in the state where the order was made.

History: **En. 91A-3-408 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-408; amd. Sec. 2331, Ch. 56, L. 2009.**

72-3-313. Order for formal probate. (1) After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, that venue is proper, and that the proceeding was commenced within the limitation prescribed by 72-3-122, it shall determine the decedent's domicile at death, the decedent's heirs, and the decedent's state of testacy. Any will found to be valid and unrevoked must be formally probated.

(2) Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by 72-3-523.

(3) The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.

History: **En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-409(part); amd. Sec. 2332, Ch. 56, L. 2009.**

72-3-314. Probate of more than one instrument — order. (1) If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication.

(2) If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may but need not indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of 72-3-317.

History: **En. 91A-3-410 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-410.**

72-3-315. Order of partial intestacy. If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

History: **En. 91A-3-411 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-411.**

72-3-316. Will from place where probate unprovided for. A will from a place which does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

History: **En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-409(part).**

72-3-317. Effect of formal testacy order — modification or vacation — fact of death — remedies of alleged decedent. Subject to appeal and subject to vacation as provided in 72-3-318 and this section, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:

(a) were unaware of its existence at the time of the earlier proceeding; or

(b) were unaware of the earlier proceeding and were given no notice of the proceeding, except by publication;

(2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons:

(a) were unaware of their relationship to the decedent;

(b) were unaware of the decedent's death; or

(c) were given no notice of any proceeding concerning the decedent's estate, except by publication;

(3) a petition for vacation under either subsection (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement;

(b) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to probate a will of the decedent;

(c) 12 months after the entry of the order sought to be vacated;

(4) the order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;

(5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at the last-known address and the court finds that a search under 72-3-306 was made. If the alleged decedent is not dead, even if notice was sent and search was made, the alleged decedent may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

History: En. 91A-3-412 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-412; amd. Sec. 26, Ch. 592, L. 1995.

72-3-318. Modification or vacation for other cause. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

History: En. 91A-3-413 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-413.

72-3-319. Formal appointment proceedings. (1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by 72-3-301 as well as by this section. In other cases, the petition shall contain or adopt the statements required by 72-3-202 and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative, and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under 72-3-501 through 72-3-508, make a proper appointment, and if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under 72-3-526.

History: En. 91A-3-414 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-414.

72-3-320. Nondomiciliary decedent — will filed and not probated in domiciliary state. A will of a nondomiciliary decedent that has been filed and not probated in a court in the domiciliary state may be proved for probate in this state by an authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has been filed and not submitted for probate in the court in the domiciliary state.

History: En. Sec. 1, Ch. 410, L. 2005.

72-3-321. Formal testacy proceedings — contested cases. In a contested case in which the proper execution of a will is at issue, the following rules apply:

(1) If the will is self-proved pursuant to 72-2-524, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

(2) If the will is witnessed pursuant to 72-2-522(1), but not self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

History: En. Sec. 63, Ch. 313, L. 2019.

Part 4
Supervised Administration

72-3-401. Supervised administration — nature and purpose — presumptive entitlement. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

History: En. 91A-3-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-501(part); amd. Sec. 9, Ch. 238, L. 2011; amd. Sec. 64, Ch. 313, L. 2019.

72-3-402. Petition and order. (1) A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

(2) After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(a) if the decedent's will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(b) only upon a finding that it is necessary for protection of persons interested in the estate if the decedent's will directs unsupervised administration; or

(c) in other cases if the court finds that supervised administration is necessary under the circumstances.

History: En. 91A-3-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-502.

72-3-403. Effect on other proceedings and previously appointed personal representative. (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or filed after the pending proceeding.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by 72-3-303 and 72-3-304.

(3) After a personal representative has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously may not exercise the power to distribute any estate. The filing of the petition does not affect the personal representative's other powers and duties unless the court restricts the exercise of any of them pending a full hearing on the petition.

History: En. 91A-3-503 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-503; amd. Sec. 2333, Ch. 56, L. 2009.

72-3-404. Powers of personal representative in supervised administration. Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but the personal representative may not exercise the power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative that may be ordered by the court must be endorsed on the personal representative's letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative.

History: En. 91A-3-501, 91A-3-504 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-501(part), 91A-3-504; amd. Sec. 2334, Ch. 56, L. 2009; amd. Sec. 65, Ch. 313, L. 2019.

72-3-405. Interim orders. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

History: En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-505(part).

72-3-406. Closing orders. Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under 72-3-1001 and 72-3-1002.

History: En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-505(part).

Part 5
Personal Representative
Appointment Priorities, Bond, and Termination

72-3-501. Who may not be personal representative. No person is qualified to serve as a personal representative who is:

(1) under the age of 18;

(2) a person whom the court finds unsuitable in formal proceedings.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(6).

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

72-3-502. Priorities for appointment. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;
(3) the custodial parent of a minor decedent;
(4) other devisees of the decedent;
(5) the surviving spouse of the decedent;
(6) the parent of an adult decedent who was survived by issue, none of whom is an adult;
(7) other heirs of the decedent;
(8) public administrator;
(9) 45 days after the death of the decedent, any creditor.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(1); amd. Sec. 1, Ch. 219, L. 1989; amd. Sec. 66, Ch. 313, L. 2019.

72-3-503. Objection to appointment. (1) An objection to an appointment can be made only in formal proceedings.

(2) In case of objection the priorities stated in 72-3-502 apply, except that:

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(2).

72-3-504. Renunciation — nomination of other — two or more persons sharing priority. (1) A person entitled to letters under 72-3-502(2) through (7) may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(3); amd. Sec. 2335, Ch. 56, L. 2009; amd. Sec. 67, Ch. 313, L. 2019.

72-3-505. Rights of conservators relating to appointment. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(4).

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

72-3-506. Priority of domiciliary personal representative. A personal representative appointed by a court of the decedent's domicile has priority over all other persons, except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(7).

72-3-507. Appointment of one not having priority. Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to 72-3-504, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(5).

72-3-508. Application of priority provisions to appointment of successor. Sections 72-3-501 through 72-3-507 govern priority for appointment of a successor personal representative but do not apply to the selection of a special administrator.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(8).

72-3-509 and 72-3-510 reserved.

72-3-511. Acceptance of appointment — consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding must be delivered to the personal representative or mailed to the personal representative by ordinary first-class mail at the address as listed in the application or petition for appointment or as reported to the court and to the personal representative's address as then known to the petitioner.

History: En. 91A-3-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-602; amd. Sec. 2336, Ch. 56, L. 2009.

72-3-512. Qualification — filing of bond and statement of acceptance. Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

History: En. 91A-3-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-601.

Cross-References

Documents requiring seals, 3-1-206.

Authority of agent, Title 28, ch. 10, part 4.

72-3-513. Bond — when required. (1) Bond is not required of a personal representative appointed in informal proceedings, except:

(a) upon the appointment of a special administrator;

(b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(c) when bond is required under 72-3-514.

(2) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary.

(3) Bond is not required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of the personal representative's duties.

History: En. 91A-3-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-603; amd. Sec. 2337, Ch. 56, L. 2009.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of $5,000 or any creditor having a claim in excess of $5,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Upon filing of the demand, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the personal representative's office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for removal and appointment of a successor personal representative.

History: En. 91A-3-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-605; amd. Sec. 2338, Ch. 56, L. 2009; amd. Sec. 68, Ch. 313, L. 2019.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-515. Bond amount — security — reduction. (1) If bond is required and the provisions of the will or order do not specify the amount, unless stated in the application or petition, the person qualifying shall file a statement under oath with the clerk indicating the person's best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and the person shall execute and file a bond with the clerk or give other suitable security in an amount not less than the estimate.

(2) The clerk shall determine that the bond is duly executed by a corporate surety or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security.

(3) The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

History: En. 91A-3-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-604; amd. Sec. 2339, Ch. 56, L. 2009.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-516. Terms of bond — liability of surety. (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds must name the state as obligee for the benefit of the persons interested in the estate and must be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties must be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court that issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding must be delivered to the surety or mailed to the surety by certified mail at the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-3-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-606; amd. Sec. 2340, Ch. 56, L. 2009.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-517 through 72-3-520 reserved.

72-3-521. Termination of appointment — general effect. Termination of appointment of a personal representative occurs as indicated in 72-3-522 through 72-3-526, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve the personal representative of the duty to preserve assets subject to the personal representative's control, to account for the assets, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative but terminates the personal representative's authority to represent the estate in any pending or future proceeding.

History: En. 91A-3-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-608; amd. Sec. 2341, Ch. 56, L. 2009.

72-3-522. Termination of appointment — death or disability. (1) The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates the personal representative's appointment.

(2) Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by the representative's decedent or ward at the time the appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon that person's appointment and qualification.

History: En. 91A-3-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-609; amd. Sec. 2342, Ch. 56, L. 2009.

72-3-523. Termination of appointment — change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will that is superseded by formal probate of another will or the vacation of an informal probate of a will subsequent to the appointment of the personal representative under the will does not terminate the appointment of the personal representative although the personal representative's powers may be reduced as provided in 72-3-304. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If a request for new appointment is not made within 30 days after expiration of time for appeal from the order in formal testacy proceedings or from the informal probate changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will or as in intestacy, as the case may be.

History: En. 91A-3-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-612; amd. Sec. 2343, Ch. 56, L. 2009.

72-3-524. Termination of appointment — closing of estate. (1) An appointment of a personal representative terminates, as provided in 72-3-1004, 1 year after the filing of a closing statement.

(2) An order closing an estate as provided in 72-3-1001, 72-3-1002, or 72-3-1003 terminates an appointment of a personal representative.

History: En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(1), (2).

72-3-525. Termination of appointment — voluntary. A personal representative may resign the position by filing a written statement of resignation with the clerk after the personal representative has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to the successor representative.

History: En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(3); amd. Sec. 2344, Ch. 56, L. 2009.

72-3-526. Termination of appointment — removal for cause. (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice must be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in 72-3-617, after receipt of notice of removal proceedings, the personal representative may not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of or under the control of the personal representative being removed.

(2) Cause for removal exists:

(a) when removal would be in the best interests of the estate; or

(b) if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing self-appointment or appointment of the personal representative's nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

History: **En. 91A-3-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-611; amd. Sec. 2345, Ch. 56, L. 2009.**

72-3-527. Successor personal representative. (1) Parts 2 and 3 of this chapter govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated.

(2) After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and a notice, process, or claim that was given or served upon the former personal representative is not required to be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may have obtained or preserved with reference to the former personal representative.

(3) Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had if the former personal representative's appointment had not been terminated.

History: **En. 91A-3-613 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-613; amd. Sec. 2346, Ch. 56, L. 2009.**

Part 6

Personal Representative Powers, Duties, and Compensation

72-3-601. Time of accrual of duties and powers — power of executor prior to appointment — ratification. (1) The duties and powers of a personal representative commence upon appointment. The powers of a personal representative relate back in time to give acts by the person appointed that are beneficial to the estate occurring prior to appointment the same effect as those occurring after appointment.

(2) Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's body, funeral, and burial arrangements.

(3) A personal representative may ratify and accept acts on behalf of the estate done by others when the acts would have been proper for a personal representative.

History: **En. 91A-3-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-701; amd. Sec. 2347, Ch. 56, L. 2009.**

72-3-602. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until the person's appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the subsequent representative done in good faith before notice of the first letters are not void for want of validity of appointment.

History: **En. 91A-3-702 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-702; amd. Sec. 2348, Ch. 56, L. 2009.**

72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after appointment, every personal representative, except any special administrator, shall give information of the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) (a) The information must:

(i) include the name and address of the personal representative;

(ii) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(iii) indicate whether bond has been filed; and

(iv) describe the court where papers relating to the estate are on file.

(b) The information must state that the estate is being administered by the personal representative under the Uniform Probate Code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

(3) The personal representative's failure to give this information is a breach of the personal representative's duty to the persons concerned but does not affect the validity of the personal representative's appointment, powers, or other duties.

(4) A personal representative may inform other persons of the appointment by delivery or ordinary first-class mail.

History: En. 91A-3-705 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-705; amd. Sec. 11, Ch. 582, L. 1989; amd. Sec. 2349, Ch. 56, L. 2009.

72-3-604. Standing to sue. Except as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(3); amd. Sec. 2350, Ch. 56, L. 2009.

72-3-605. Personal representative to proceed without court order — power to invoke jurisdiction. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but the personal representative may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

History: En. 91A-3-704 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-704; amd. Sec. 2351, Ch. 56, L. 2009.

72-3-606. Possession and protection of estate. (1) Except as otherwise provided by a decedent's will, a personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled to the property unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession of the property, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine the title to the property.

History: En. 91A-3-708 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-708; amd. Sec. 97, Ch. 2, L. 2009; amd. Sec. 2352, Ch. 56, L. 2009.

Cross-References

Disposition of property of deceased — suicide note, 7-4-2917.

Estate tax, Title 72, ch. 16, part 9.

72-3-607. Inventory — appraisal. (1) Within 9 months after appointment, a personal representative who is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare an inventory of probate property owned by the decedent at the time of the decedent's death, listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.

(2) The inventory must include a statement of the fair market value of the decedent's interest in every item listed in the inventory. The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser must be indicated on the inventory with the item or items appraised.

(3) The personal representative shall:

(a) send a copy of the inventory to the following who request it: heirs, devisees, and creditors with allowed claims that have not been satisfied; or

(b) file the original of the inventory with the court and send a copy of the inventory to interested persons who request it.

(4) An heir, devisee, creditor, and any other interested person may waive their right to receive a copy of the inventory by executing a written waiver that is delivered to the personal representative. For the purposes of subsection (3)(a), the personal representative is considered to have sent a copy of the inventory to the waiving party.

(5) The personal representative may prepare a list of all property owned by the decedent at the time of decedent's death, including both probate and nonprobate property, the fair market value and nature of the decedent's interest in the property on the date of the decedent's death, and the name of each nonprobate transferee.

(6) Unless the court orders otherwise after notice and hearing, within 90 days of a demand by the decedent's spouse who has a right to election under 72-2-232 and whose right has not expired pursuant to 72-2-241, the personal representative who is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare a list of all property owned by the decedent at the time of decedent's death, including both probate and nonprobate property, the fair market value and nature of the decedent's interest in the property on the date of the decedent's death, and the name of each nonprobate transferee, in each case, to the extent known or reasonably discoverable by the personal representative, and shall mail a copy of the list to the surviving spouse who has demanded it.

(7) The personal representative has authority to acquire information necessary to complete the inventory described in subsection (1) and to complete the list described in subsections (5) and (6). Parties providing the information requested by the personal representative are discharged from all liability for doing so. The personal representative is discharged from all liability for disclosing the information necessary to fulfill the personal representative's duties and for disclosing the information to the surviving spouse under subsection (5).

History: En. 91A-3-706 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 4, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-706; amd. Sec. 12, Ch. 582, L. 1989; amd. Sec. 17, Ch. 9, Sp. L. May 2000; amd. Sec. 1, Ch. 68, L. 2003; amd. Sec. 69, Ch. 313, L. 2019; amd. Sec. 2, Ch. 564, L. 2023.

72-3-608. Repealed. Sec. 18, Ch. 52, L. 1981.

History: En. 91A-3-715.1 by Sec. 6, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-715.1.

72-3-609. Supplemental inventory. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplemental inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any. The personal representative shall file the supplemental inventory with the court if the original inventory was filed or shall furnish copies of the supplemental inventory or information to persons interested in the new information.

History: En. 91A-3-707 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-707; amd. Sec. 2, Ch. 68, L. 2003.

72-3-610. General duties — fiduciary. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(1); amd. Sec. 2353, Ch. 56, L. 2009.

Cross-References

Trust Code, Title 72, ch. 38.

72-3-611. No surcharge for authorized acts generally — limitation. (1) A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding.

(2) This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(2); amd. Sec. 2354, Ch. 56, L. 2009; amd. Sec. 70, Ch. 313, L. 2019.

72-3-612. No individual liability — exceptions — certain claims to be brought against personal representative. (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in the personal representative's fiduciary capacity in the course of administration of the estate unless the personal representative fails to reveal the representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if the personal representative is personally at fault.

(3) Claims based on contracts entered into by a personal representative in a fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in the personal representative's fiduciary capacity, whether or not the personal representative is individually liable.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

History: En. 91A-3-808 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-808; amd. Sec. 2355, Ch. 56, L. 2009.

72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, the personal representative may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) satisfy and settle claims and distribute the estate as provided in this code.

History: En. 91A-3-713 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-713; amd. Sec. 1, Ch. 145, L. 1989; amd. Sec. 5, Ch. 290, L. 1999; amd. Sec. 71, Ch. 313, L. 2019.

72-3-614. Power to recover property that is subject of void or voidable transfer. The property liable for the payment of unsecured debts of a decedent includes all property transferred by the decedent by any means that is in law void or voidable as against the decedent's creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

History: En. 91A-3-709 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-709; amd. Sec. 2356, Ch. 56, L. 2009.

Cross-References

Liens, Title 71, ch. 3.

72-3-615. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to the personal representative, the personal representative's spouse, agent, or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest or any transaction that is affected by a substantial conflict of interest on the part of the personal representative is voidable by any person interested in the estate except one who has consented after fair disclosure unless:

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

History: En. 91A-3-711 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-711; amd. Sec. 2357, Ch. 56, L. 2009.

72-3-616. Improper exercise of power — breach of fiduciary duty. (1) If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of the personal representative's fiduciary duty to the same extent as a trustee of an express trust.

(2) The rights of purchasers and others dealing with a personal representative must be determined as provided in 72-3-615 and 72-3-618.

History: En. 91A-3-710 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-710; amd. Sec. 2358, Ch. 56, L. 2009.

Cross-References

Duties of trustees, Title 72, ch. 38, part 8.

72-3-617. Order restraining personal representative. (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution or exercise of any powers or discharge of any duties of the office or make any other order to secure proper performance of the personal representative's duty if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter must be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs must be given to the personal representative and the personal representative's attorney of record, if any, and to any other parties named defendant in the petition.

History: En. 91A-3-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-607; amd. Sec. 2359, Ch. 56, L. 2009.

72-3-618. Persons dealing with personal representative — protection. (1) A person who in good faith and without notice either assists a personal representative or deals with a personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives that are endorsed on letters as provided in 72-3-404, a provision in any will or order of court purporting to limit the power of a personal representative is not effective except as to persons with actual knowledge of the provision.

(2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

(3) The protection expressed in this section extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection expressed in this section is not a substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History: En. 91A-3-712 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-712; amd. Sec. 18, Ch. 9, Sp. L. May 2000; amd. Sec. 73, Ch. 313, L. 2019.

72-3-619. Powers of personal representatives in general. (1) Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

(2) A personal representative has access to and authority over a digital asset of the decedent to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by order of court.

History: En. Sec. 72, Ch. 313, L. 2019.

72-3-620 reserved.

72-3-621. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but the successor personal representative may not exercise any power expressly made personal to the executor named in the will.

History: En. 91A-3-716 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-716; amd. Sec. 2360, Ch. 56, L. 2009.

72-3-622. Corepresentatives — when joint action required. If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply:

(1) when any corepresentative receives and receipts for property due the estate;

(2) when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate; or

(3) when a corepresentative has been delegated to act for the others.

History: En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).

72-3-623. Persons dealing with single corepresentative — protection. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with the corepresentative or if advised by the personal representative with whom they deal that the personal representative has authority to act alone for any of the reasons mentioned in this part, are as fully protected as if the person with whom they dealt had been the sole personal representative.

History: En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part); amd. Sec. 2361, Ch. 56, L. 2009.

72-3-624. Powers of remaining corepresentative. Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

History: En. 91A-3-718 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-718.

72-3-625 through 72-3-630 reserved.

72-3-631. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for services.

(2) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

History: En. 91A-3-719 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-719; amd. Sec. 1, Ch. 424, L. 1979; amd. Sec. 19, Ch. 9, Sp. L. May 2000; amd. Sec. 74, Ch. 313, L. 2019.

Cross-References

Compensation of Public Administrator, 72-15-301.

Inheritance and estate taxes, Title 72, ch. 16.

72-3-632. Expenses of personal representative in estate litigation. If a personal representative or person nominated as personal representative defends or prosecutes a proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate the personal representative's necessary expenses and disbursements, including reasonable attorney fees incurred.

History: En. 91A-3-721 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-721; amd. Sec. 2362, Ch. 56, L. 2009.

72-3-633. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. 91A-3-720 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-720.

72-3-634. Proceedings for review of employment of agents and compensation of personal representatives and employees. (1) Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative, or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment adviser, or other specialized agent or assistant, the reasonableness of the compensation of any person employed, or the reasonableness of the compensation determined by the personal representative for the personal representative's own services must be reviewed and determined by the court.

(2) In a dispute concerning fees, the court shall set the fee.

(3) A person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

History: En. 91A-3-722 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-722; amd. Sec. 2363, Ch. 56, L. 2009.

Part 7
Special Administrator

72-3-701. Special administrator — how and when appointed. A special administrator may be appointed:

(1) informally by the clerk on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in 72-3-522;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

History: En. 91A-3-614 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-614.

72-3-702. Special administrator — who may be appointed. (1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(2) In other cases, any proper person may be appointed special administrator.

History: En. 91A-3-615 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-615.

72-3-703. Special administrator appointed informally — powers and duties. A special administrator appointed by the clerk in informal proceedings pursuant to 72-3-701(1) has the duty to collect and manage the assets of the estate, to preserve them, to account for them, and to deliver them to the general personal representative upon the personal representative's qualification. The special administrator has the power of a personal representative under the code necessary to perform the special administrator's duties.

History: En. 91A-3-616 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-616; amd. Sec. 2364, Ch. 56, L. 2009.

72-3-704. Special administrator — formal proceedings — power and duties. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative, except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

History: En. 91A-3-617 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-617.

72-3-705. Special administrator — termination of appointment. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in 72-3-521 through 72-3-526.

History: En. 91A-3-618 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-618.

Part 8
Creditors' Claims

72-3-801. Notice to creditors. (1) Unless notice has already been given under this section, a personal representative upon appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing the personal representative's appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.

(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present the creditor's claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.

(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.

History: En. 91A-3-801 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-801; amd. Sec. 1, Ch. 500, L. 1989; amd. Sec. 2365, Ch. 56, L. 2009.

72-3-802. Statutes of limitations — waiver — suspension. (1) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

(2) The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

(3) For purposes of any statute of limitations, the proper presentation of a claim under 72-3-804 is equivalent to commencement of a proceeding on the claim.

History: En. 91A-3-802 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-802; amd. Sec. 2, Ch. 500, L. 1989.

Cross-References

Statutes of limitations, Title 27, ch. 2.

72-3-803. Nonclaim — limitations on presentation of claims — exceptions. (1) All claims against a decedent's estate that arose before the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees and nonprobate transferees of the decedent unless presented within the earlier of the following time limitations:

(a) within 1 year after the decedent's death; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication.

(2) A claim described in subsection (1) which is barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state is barred in this state.

(3) All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

(4) This section does not affect or prevent:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

History: En. 91A-3-803 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 352, L. 1975; R.C.M. 1947, 91A-3-803; amd. Sec. 3, Ch. 6, L. 1979; amd. Sec. 3, Ch. 500, L. 1989; amd. Sec. 2366, Ch. 56, L. 2009; amd. Sec. 75, Ch. 313, L. 2019.

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9A.
Mortgages, Pledges, and Liens, Title 71.
Inheritance and estate taxes, Title 72, ch. 16.

72-3-804. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is considered presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative, in any court where the personal representative may be subjected to jurisdiction, to obtain payment of the claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. A presentation of claim is not required in regard to matters claimed in proceedings against the decedent that were pending at the time of death.

(3) If a claim is presented under subsection (1), a proceeding on the claim may not be commenced more than 60 days after the personal representative has mailed a notice of disallowance, but in the case of a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period or,

to avoid injustice, the court, on petition, may order an extension of the 60-day period, but the extension may not run beyond the applicable statute of limitations.

History: **En. 91A-3-804 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-804; amd. Sec. 2367, Ch. 56, L. 2009.**

72-3-805. Allowance and disallowance of claims — interest on allowed claims. (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. A claim that is disallowed in whole or in part by the personal representative is barred so far as it is not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on the claimant's claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(3) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1). Notice in this proceeding must be given to the claimant, the personal representative, and those other persons interested in the estate that the court may direct by order entered at the time the proceeding is commenced.

(4) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(5) Unless otherwise provided in a judgment in another court entered against the personal representative, an allowed claim bears interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case the claim bears interest in accordance with that provision.

History: **En. 91A-3-806 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 7, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-806; amd. Sec. 13, Ch. 582, L. 1989; amd. Sec. 2368, Ch. 56, L. 2009.**

Cross-References

Legal interest, 31-1-106.
Interest rate allowed by agreement, 31-1-107.

72-3-806. Counterclaims — deduction. (1) In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.

(2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: **En. 91A-3-811 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-811.**

72-3-807. Classification of claims as to priority of payment. (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

(c) federal estate and Montana state estate taxes;

(d) debt for a current support obligation and past-due support for the decedent's children pursuant to a support order as defined in 40-5-201;

(e) debts with preference under federal and Montana law;

(f) other federal and Montana state taxes;

(g) all other claims.

(2) A preference may not be given in the payment of any claim over any other claim of the same class, and a claim due and payable may not be entitled to a preference over claims not due.

History: En. 91A-3-805 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 352, L. 1975; R.C.M. 1947, 91A-3-805; amd. Sec. 18, Ch. 482, L. 1997; amd. Sec. 20, Ch. 9, Sp. L. May 2000.

Cross-References

Wages — preferred debts, 71-3-302.

72-3-808. Payment of claims. (1) Upon the expiration of the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but the personal representative is personally liable to any other claimant whose claim is allowed and who is injured by the payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in a manner that deprives the injured claimant of the claimant's priority.

History: En. 91A-3-807 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-807; amd. Sec. 4, Ch. 500, L. 1989; amd. Sec. 2369, Ch. 56, L. 2009.

72-3-809 and 72-3-810 reserved.

72-3-811. Secured claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders the creditor's security. Otherwise, payment is upon the basis of one of the following:

(1) if the creditor exhausts the creditor's security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust the creditor's security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

History: En. 91A-3-809 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-809; amd. Sec. 2370, Ch. 56, L. 2009.

72-3-812. Encumbered assets. (1) If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part of the encumbrance, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of the lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate.

(2) Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

History: En. 91A-3-814 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-814; amd. Sec. 2371, Ch. 56, L. 2009.

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9A.
Mortgages, Pledges, and Liens, Title 71.

72-3-813. Execution and levies prohibited. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

History: En. 91A-3-812 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-812.

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9A.
Mortgages, Pledges, and Liens, Title 71.

72-3-814. Claims not due and contingent or unliquidated claims. (1) If a claim that will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account.

(b) Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: En. 91A-3-810 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-810; amd. Sec. 2372, Ch. 56, L. 2009.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
Mortgages, Title 71, ch. 1.
Trust Code, Title 72, ch. 38.

72-3-815. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

History: En. 91A-3-813 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-813; amd. Sec. 76, Ch. 313, L. 2019.

72-3-816 through 72-3-820 reserved.

72-3-821. Administration in more than one state — payment of claims. (1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of the claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor benefited is to receive dividends from local assets only upon the balance of the creditor's claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state must be paid their proportion if local assets are adequate for the purpose, and the balance of local assets must be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local

assets must be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

History: **En. 91A-3-815 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-815; amd. Sec. 2373, Ch. 56, L. 2009.**

72-3-822. Distribution to domiciliary personal representative — exceptions. (1) The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

(a) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(b) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(c) the court orders otherwise in a proceeding for a closing order under 72-3-1001 or incident to the closing of a supervised administration.

(2) In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this chapter.

History: **En. 91A-3-816 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-816.**

Part 9
Special Provisions Relating to Distribution

72-3-901. Abatement. (1) Except as provided in subsection (3) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

(a) property not disposed of by the will;

(b) residuary devises;

(c) general devises;

(d) specific devises.

(2) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged and, upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(3) If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in or contribution from other interests in the remaining assets.

History: **En. 91A-3-902 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-902.**

72-3-902. Distribution in kind preferred — method — valuation. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate must be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to that devisee, and a spouse or child who has selected particular assets of an estate as provided in 72-2-413 must receive the items selected.

(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind if:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), any security regularly traded on a recognized exchange, if distributed in kind, is valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and asked at the close of that day. An asset consisting of a sum owed the decedent or the estate by a solvent debtor as to which there is no known dispute or defense is valued at the sum due with accrued interest or discounted to the date of distribution. For an asset that has no readily ascertainable value, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of any asset as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the asset may have been previously appraised.

(4) The residuary estate must be distributed in any equitable manner.

History: En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-906(1); amd. Sec. 14, Ch. 582, L. 1989; amd. Sec. 2374, Ch. 56, L. 2009.

Cross-References

Homestead allowance, 72-2-412.
Family allowance, 72-2-414.

72-3-903. Proposal for distribution — delivery — objection. (1) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution.

(2) The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

History: En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-906(2); amd. Sec. 2375, Ch. 56, L. 2009.

72-3-904. Distribution in kind — evidence of title. If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

History: En. 91A-3-907 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-907.

72-3-905. Distribution by personal representative conclusive evidence of succession to interest by distributee. Proof that a distributee has received an instrument or deed of distribution of assets in kind or payment in distribution from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

History: En. 91A-3-908 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-908.

72-3-906. Improper distribution or payment — liability of distributee or payee. Unless the distribution or payment can no longer be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid or a claimant who was improperly paid is liable to return the property improperly received and its income since distribution if the claimant has the property. If the claimant does not have the property, then the claimant is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by the claimant.

History: En. 91A-3-909 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-909; amd. Sec. 2376, Ch. 56, L. 2009.

72-3-907. Purchases from distributees protected. (1) If property distributed in kind or a security interest in that property is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative or is so acquired by a purchaser from or lender to a transferee from the distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.

(2) This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to the personal representative distributee, as well as a purchaser from or lender to any other distributee or the distributee's transferee. To be protected under this provision, a purchaser or lender need not inquire as to whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section is prima facie evidence that the transfer was made for value.

(3) For purposes of this section, the term "purchaser" includes any lessee or other person acquiring any interest in the property for value.

History: En. 91A-3-910 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-910; amd. Sec. 9, Ch. 52, L. 1981; amd. Sec. 2377, Ch. 56, L. 2009.

72-3-908 through 72-3-910 reserved.

72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title to the property by proof of the decedent's ownership, the decedent's death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

History: En. 91A-3-901 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-901; amd. Sec. 2378, Ch. 56, L. 2009.

Cross-References

Intestate succession, Title 72, ch. 2, part 1.
Homestead allowance, 72-2-412.
Exempt property, 72-2-413.

72-3-912. Successor's indebtedness to estate offset against interest — defenses available. The amount of a noncontingent indebtedness of a successor to the estate if due or its present value if not due must be offset against the successor's interest. However, the successor has the benefit of any defense that would be available to the successor in a direct proceeding for recovery of the debt.

History: En. 91A-3-903 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-903; amd. Sec. 2379, Ch. 56, L. 2009.

72-3-913. Interest on general pecuniary devise. General pecuniary devises bear interest at the legal rate beginning 1 year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

History: En. 91A-3-904 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-904.

Cross-References

Legal interest, 31-1-106.

72-3-914. Partition for purpose of distribution. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

History: En. 91A-3-911 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-911.

72-3-915. Private agreements among successors as to distribution — testamentary trustee as successor. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to the obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of the personal representative's office for the benefit of any successors of the decedent who are not parties.

(2) Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. This section does not relieve trustees of any duties owed to beneficiaries of trusts.

History: **En. 91A-3-912 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-912; amd. Sec. 2380, Ch. 56, L. 2009.**

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

72-3-916. Distribution to trustee — registration — bond. (1) Before making a distribution to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and may require that the trustee inform in writing the current beneficiaries and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of the trustee's name and address and provide each with a copy of the terms of the trust that describe or affect the interest of the beneficiaries and with relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from posting bond, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative believes that distribution might jeopardize the interests of persons who are not able to protect themselves and the personal representative may withhold distribution until the court has acted.

(3) An inference of negligence on the part of the personal representative may not be drawn from the personal representative's failure to exercise the authority conferred by subsections (1) and (2).

History: **En. 91A-3-913 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-913; amd. Sec. 4, Ch. 6, L. 1979; amd. Sec. 2381, Ch. 56, L. 2009; amd. Sec. 36, Ch. 19, L. 2011.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-3-917. Distribution to person under disability. (1) A personal representative may discharge the personal representative's obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to a minor or person under other disability as authorized by 72-5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $50,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of the disabled person, but the receiving person may not accept any pay except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3).

History: **En. 91A-3-915 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-915; amd. Sec. 15, Ch. 582, L. 1989; amd. Sec. 64, Ch. 7, L. 2001; amd. Sec. 25, Ch. 109, L. 2011; amd. Sec. 77, Ch. 313, L. 2019.**

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

72-3-918. Disposition of unclaimed assets — escheat. (1) If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the missing person's share to the person's conservator, if any, otherwise to the department of revenue to be deposited in the state escheat fund as provided in Title 72, chapter 14.

(2) A person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in Title 72, chapter 14, concerning escheated estates, to claim the share.

History: **En. 91A-3-914 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-914; amd. Sec. 2382, Ch. 56, L. 2009.**

Part 10
Closing Estates

72-3-1001. Formal proceedings terminating administration — testate or intestate — order of complete settlement. (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after 1 year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

(2) The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs, and to adjudicate the final settlement and distribution of the estate.

(3) After notice to all interested persons and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

History: **En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1001(1).**

72-3-1002. Order of complete settlement as to persons previously omitted or unnotified in previous formal testacy proceeding. If one or more heirs or devisees were omitted as parties in or were not given notice of a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under 72-3-1001 and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

History: **En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1001(2).**

72-3-1003. Formal proceedings terminating administration under informally probated will — settlement order construing will without adjudicating testacy. (1) A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate that will not adjudicate the testacy status of the decedent. The personal representative may petition at any time and a devisee may petition after 1 year from the appointment of the original personal representative, except that a petition under this section may not be entertained until the time for presenting claims that arose prior to the death of the decedent has expired.

(2) The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will, and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the

proceeding and those the devisee represents. If it appears that a part of the estate is intestate, the proceedings must be dismissed or amendments must be made to meet the provisions of 72-3-1001 and 72-3-1002.

History: En. 91A-3-1002 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1002; amd. Sec. 2383, Ch. 56, L. 2009.

72-3-1004. Closing estate by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate a verified statement stating that the personal representative, or a prior personal representative, has:

(a) determined that the time limitation for presentation of creditors' claims has expired;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims that were presented, expenses of administration, and estate and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it must state in detail other arrangements that have been made to accommodate outstanding liabilities; and

(c) sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the administration to the distributees whose interests are affected by the accounting.

(2) If proceedings involving the personal representative are not pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

History: En. 91A-3-1003 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1003; amd. Sec. 5, Ch. 500, L. 1989; amd. Sec. 21, Ch. 9, Sp. L. May 2000.

Cross-References

Notice to creditors, 72-3-801.

Inheritance and estate taxes, Title 72, ch. 16.

72-3-1005. Final accounting required to close estate. (1) Before an estate may be finally closed and the personal representative relieved of duties and obligations, the personal representative shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by the personal representative, the amount of all claims presented against the estate, and the names of the claimants and all other matters necessary to show the state of its affairs.

(2) Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings.

(3) If the personal representative is the sole residual beneficiary of the estate, an accounting need not be made.

History: En. 91A-3-1012 by Sec. 5, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-1012; amd. Sec. 10, Ch. 52, L. 1981; amd. Sec. 2384, Ch. 56, L. 2009.

72-3-1006. Repealed. Sec. 8, Ch. 545, L. 2025.

History: En. 91A-3-1004 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 99, L. 1975; R.C.M. 1947, 91A-3-1004; amd. Sec. 11, Ch. 52, L. 1981; amd. Sec. 22, Ch. 9, Sp. L. May 2000; amd. Sec. 3, Ch. 68, L. 2003; amd. Sec. 7, Ch. 364, L. 2009.

72-3-1007 through 72-3-1010 reserved.

72-3-1011. Limitation on actions against personal representative. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within 6 months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

History: En. 91A-3-1006 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1006.

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Remedies for fraud — statute of limitations, 72-1-111.

72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim that is not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of the distributee's distribution as of the time of distribution or for amounts in excess of the value of the distributee's distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the demand made upon the distributee by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against the distributee loses the right of contribution against other distributees.

History: En. 91A-3-1005 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1005; amd. Sec. 2385, Ch. 56, L. 2009; amd. Sec. 78, Ch. 313, L. 2019.

72-3-1013. Limitation on actions against distributees. (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1 year after the time of distribution, but all claims of creditors of the decedent are barred 1 year after the decedent's death.

(2) This section does not bar an action to recover property or value received as the result of fraud.

History: En. 91A-3-1007 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1007; amd. Sec. 79, Ch. 313, L. 2019.

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Remedies for fraud — statute of limitations, 72-1-111.

72-3-1014. Certificate discharging liens securing fiduciary performance. After the personal representative's appointment has terminated, the personal representative, the personal representative's sureties, or any successor of either, upon the filing of a verified application showing so far as is known by the applicant that an action concerning the estate is not pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety.

History: En. 91A-3-1008 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1008; amd. Sec. 2386, Ch. 56, L. 2009.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

72-3-1015. Estate to be closed within two years. (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the supreme court administrator shall notify the district judge. The judge shall order the personal representative and the personal representative's attorney to appear before the court and show cause why the estate has not been closed.

(2) If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within 30 days and that the personal representative and the personal representative's attorney may not receive a fee or other compensation from the estate.

History: En. 91A-3-1011 by Sec. 1, Ch. 191, L. 1975; R.C.M. 1947, 91A-3-1011; amd. Sec. 5, Ch. 104, L. 1981; amd. Sec. 2387, Ch. 56, L. 2009.

72-3-1016. Subsequent administration upon discovery of other property. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after 1 year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

History: **En. 91A-3-1009 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1009.**

Part 11

Collection of Personal Property by Affidavit and Summary Administration Procedure for Small Estates

72-3-1101. Collection of personal property by affidavit. (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the probate estate, wherever located, less liens and encumbrances, does not exceed $100,000, except as provided in subsection (2);

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) The department of revenue may refund unclaimed property to a successor of the decedent, pursuant to the provisions of Title 70, chapter 9, part 8, if the value of the unclaimed property is $5,000 or less regardless of the value of the estate.

(3) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1).

History: **En. 91A-3-1201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1201; amd. Sec. 1, Ch. 124, L. 1981; amd. Sec. 1, Ch. 234, L. 1999; amd. Sec. 2, Ch. 513, L. 2005; amd. Sec. 1, Ch. 85, L. 2013; amd. Sec. 1, Ch. 453, L. 2023.**

72-3-1102. Effect of affidavit. (1) The person paying, delivering, transferring, or issuing personal property or the evidence of personal property pursuant to affidavit is discharged and released to the same extent as if the person dealt with a personal representative of the decedent. The person is not required to see to the application of the personal property or evidence of personal property or to inquire into the truth of any statement in the affidavit.

(2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence of personal property, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled to the property.

(3) A person to whom payment, delivery, transfer, or issuance is made is answerable and accountable for the property to any person representative of the estate or to any other person having a superior right.

History: **En. 91A-3-1202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1202; amd. Sec. 2388, Ch. 56, L. 2009.**

72-3-1103. Small estates — summary administration procedure. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to the creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104.

History: **En. 91A-3-1203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1203; amd. Sec. 2, Ch. 124, L. 1981; amd. Sec. 16, Ch. 582, L. 1989.**

Cross-References

Exempt property and allowances, Title 72, ch. 2, part 4.

72-3-1104. Small estates — closing by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of estate taxes and by disbursing and distributing it to the persons entitled to it; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the administration to the distributees whose interests are affected.

(2) If actions or proceedings involving the personal representative are not pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004.

History: En. 91A-3-1204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1204; amd. Sec. 3, Ch. 124, L. 1981; amd. Sec. 17, Ch. 582, L. 1989; amd. Sec. 23, Ch. 9, Sp. L. May 2000.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Exempt property and allowances, Title 72, ch. 2, part 4.

Inheritance and estate taxes, Title 72, ch. 16.

CHAPTER 4
UPC — FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION

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Part 1
General Provisions

72-4-101. Definitions. In this chapter, the following definitions apply:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in chapter 3.

(2) "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in chapter 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to 72-4-310.

(3) "Resident creditor" means a person domiciled in or doing business in this state who is or could be a claimant against an estate of a nonresident decedent.

History: **En. 91A-4-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-101.**

Part 2
Jurisdiction Over Foreign Personal Representatives

72-4-201. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

(a) filing authenticated copies of the foreign personal representative's appointment as provided in 72-4-309;

(b) receiving payment of money or taking delivery of personal property under 72-4-306; or

(c) doing any act as a personal representative in this state that would have given the state jurisdiction over the foreign personal representative as an individual.

(2) Jurisdiction under subsection (1)(b) is limited to the money or value of personal property collected.

History: **En. 91A-4-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-301; amd. Sec. 12, Ch. 52, L. 1981; amd. Sec. 2389, Ch. 56, L. 2009.**

72-4-202. Jurisdiction by act of decedent. In addition to jurisdiction conferred by 72-4-201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that the foreign personal representative's decedent was subject to jurisdiction immediately prior to death.

History: **En. 91A-4-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-302; amd. Sec. 2390, Ch. 56, L. 2009.**

72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail addressed to the foreign personal representative's last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or the foreign personal representative's decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), the foreign personal representative must be allowed at least 30 days within which to appear or respond.

History: **En. 91A-4-303 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-303; amd. Sec. 2391, Ch. 56, L. 2009; amd. Sec. 80, Ch. 313, L. 2019.**

Part 3
Powers and Duties of Foreign Personal Representative

72-4-301. Renumbered 72-4-310. Sec. 17, Ch. 52, L. 1981.

72-4-302. Renumbered 72-4-311. Sec. 17, Ch. 52, L. 1981.

72-4-303. Filing of letters, bond, inventory, and affidavit. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file with a district court in this state in a county in which property belonging to the decedent is located:

(a) an authenticated copy of the personal representative's appointment and of any official bond given;

(b) an inventory of the property of the nonresident decedent located in this state, which must contain the information prescribed in 72-3-607; and

(c) an affidavit stating:

(i) the date of death of the nonresident decedent; and

(ii) that no local administration or application or petition for local administration is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying the representative as having registered with the district court and stating the name and date of death of the decedent.

History: En. 91A-4-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-201; amd. Sec. 4, Ch. 68, L. 2003; amd. Sec. 3, Ch. 513, L. 2005.

Cross-References

District Court Clerk fees, 25-1-201.
Suretyship, Title 28, ch. 11, part 4.
Inheritance and estate taxes, Title 72, ch. 16.

72-4-304. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. 91A-4-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-202.

72-4-305. Right to inspect estate assets for inventory. A person holding property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock, or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect and appraise the property for purposes of completing the inventory called for in 72-4-303(1) upon being presented with proof of the representative's appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of death of the nonresident decedent;

(2) that no local administration or application or petition for local administration is pending in this state; and

(3) that the domiciliary foreign personal representative is entitled to make the inspection and appraisal.

History: En. 91A-4-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-203; amd. Sec. 5, Ch. 68, L. 2003.

72-4-306. Payment of debt and delivery of property to foreign representative. At any time after the expiration of 60 days from the death of a nonresident decedent, a person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt or deliver the personal property or the instrument evidencing the debt, obligation, stock, or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of the domiciliary foreign personal representative's appointment and an affidavit made by or on behalf of the representative, stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration or application or petition for local administration is pending in this state;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

History: En. 91A-4-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-204; amd. Sec. 14, Ch. 52, L. 1981; amd. Sec. 2392, Ch. 56, L. 2009.

72-4-307. Payment or delivery discharges debtor or possessor. Payment or delivery made in good faith on the basis of the certificate of the clerk of court and the certificate of the department of revenue releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

History: En. 91A-4-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-205.

72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice. Payment or delivery under 72-4-306 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid or the property delivered to the domiciliary foreign personal representative.

History: En. 91A-4-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-206; amd. Sec. 15, Ch. 52, L. 1981.

72-4-309. Proof of authority — bond. If a local administration or application or petition for local administration is not pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of the domiciliary foreign personal representative's appointment and of any official bond that the domiciliary foreign personal representative has given.

History: En. Sec. 16, Ch. 52, L. 1981; amd. Sec. 2393, Ch. 56, L. 2009.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-4-310. Powers of foreign representative generally. A domiciliary foreign personal representative who has complied with 72-4-309 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state, subject to any conditions imposed upon nonresident parties generally.

History: En. 91A-4-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-207; amd. Sec. 13, Ch. 52, L. 1981; MCA 1979, 72-4-301; redes. 72-4-310 by Sec. 17, Ch. 52, L. 1981.

72-4-311. Effect of local administration on foreign representative, third persons, and local representative. (1) The power of a domiciliary foreign personal representative under 72-4-306 or 72-4-310 may be exercised only if there is no administration or application for administration pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under 72-4-310, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate.

(2) A person who, before receiving actual notice of a pending local administration, has changed the person's position in reliance upon the powers of a foreign personal representative may not be prejudiced by reason of the application or petition for or grant of local administration. The local personal representative is subject to all duties and obligations that have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for the foreign personal representative in any action or proceedings in this state.

History: En. 91A-4-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-208; MCA 1979, 72-4-302; redes. 72-4-311 by Sec. 17, Ch. 52, L. 1981; amd. Sec. 2394, Ch. 56, L. 2009.

Part 4
Ancillary Administration

72-4-401. Ancillary administration — provisions governing. In respect to a nonresident decedent, the provisions of this code govern:

(1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative and any other order concerning the estate; and

(2) the status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration.

History: En. 91A-4-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-209.

72-4-402. Adjudication in other jurisdiction binding on local representative. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

History: En. 91A-4-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-401; amd. Sec. 2395, Ch. 56, L. 2009.

Cross-References

Effect of judicial record of another state, 26-3-203.

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Chapter Cross-References

Costs of committing patient already voluntarily admitted — transportation costs for voluntary admission, 53-21-113.

Part 1
General Provisions

72-5-101. Definitions. Unless otherwise apparent from the context, in chapters 1 through 5 and chapter 16, part 6, the following definitions apply:

(1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person or which cause has so impaired the person's judgment that the person is incapable of realizing and making a rational decision with respect to the person's need for treatment.

(2) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

(3) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply the person's estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief.

(4) "Substituted judgment" means the judgment that an incapacitated person would make if restored to capacity based upon:

(a) the person's present preference or, if the person is incapable of indicating the person's preference, the person's prior expressed preference;

(b) the person's personal, moral, and religious convictions;

(c) the person's relationship with family members;

(d) the consequences if the action proposed is not taken;

(e) the consequences if the action proposed is taken; and

(f) other relevant factors.

(5) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

History: En. 91A-5-101 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-101; amd. Sec. 1, Ch. 382, L. 1991; amd. Sec. 2396, Ch. 56, L. 2009; amd. Sec. 1, Ch. 237, L. 2009.

72-5-102. Consolidation of proceedings. When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

History: En. 91A-5-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-102; amd. Sec. 24, Ch. 236, L. 2009.

72-5-103. Delegation of powers by parent or guardian. (1) A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

(2) The 6-month limitation provided in subsection (1) does not apply to:

(a) a member of the Montana national guard who serves for more than 180 continuous days on duty pursuant to Title 10 or Title 32 of the United States Code or on state military duty as defined in 10-1-1003;

(b) a member of the active duty military forces of the United States; or

(c) a member of the federal reserves who serves for more than 180 continuous days on duty pursuant to Title 10 of the United States Code.

(3) As used in this section, "federal reserves" means the United States air force reserve, army reserve, navy reserve, marine corps reserve, or coast guard reserve.

History: En. 91A-5-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-104; amd. Sec. 1, Ch. 104, L. 1999; amd. Sec. 9, Ch. 235, L. 2015.

Cross-References

Judicial approval of marriage of minor, 40-1-213.

Powers of attorney, Title 72, ch. 5, part 5.

72-5-104. Informal discharge of duty to pay or deliver property to minor. (1) A person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding $5,000 a year, by paying or delivering the money or property to:

(a) the minor, if the minor has attained 18 years of age or is married;

(b) any person having the care and custody of the minor with whom the minor resides;

(c) a guardian of the minor; or

(d) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(3) The persons, other than the minor or any financial institution under subsection (1)(d), receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums must be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when the minor attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of the money or property.

History: En. 91A-5-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-103; amd. Sec. 2397, Ch. 56, L. 2009.

72-5-105 through 72-5-109 reserved.

72-5-110. Vaccination status prohibited as evidence or grounds for decision. In considering and deciding a petition for guardianship of a minor pursuant to part 2 or of an incapacitated adult pursuant to part 3, a court may not:

(1) admit into evidence the vaccination status of a person seeking appointment as a guardian; or

(2) consider a person's vaccination status when making an order on the petition.

History: En. Sec. 4, Ch. 286, L. 2023.

Part 2
Guardians of Minors

Part Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-201. Status of guardian of minor — how acquired generally — letters to indicate means of appointment. (1) A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court.

(2) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(3) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

History: En. 91A-5-201, 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-201, 91A-5-208(part).

72-5-202. Consent to jurisdiction by acceptance of appointment. (1) By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding must be delivered to the guardian or mailed to the guardian by ordinary mail at the guardian's address as listed in the court records and to the guardian's address as then known to the petitioner.

History: En. 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-208(part); amd. Sec. 2398, Ch. 56, L. 2009.

72-5-203 through 72-5-210 reserved.

72-5-211. Testamentary appointment of guardian of minor — when effective — priorities — notice of appointment. (1) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if before acceptance both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) Upon acceptance of an appointment, written notice of acceptance must be given by the guardian to the minor and to the person having the minor's care or to the minor's nearest adult relations.

History: En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part); amd. Sec. 2399, Ch. 56, L. 2009.

72-5-212. Recognition of appointment of guardian by foreign will. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.

History: En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part).

Cross-References

Effect of judicial record of another state, 26-3-203.

72-5-213. Objection by minor 14 years of age or older to testamentary appointment. A minor 14 years of age or older may prevent an appointment of the minor's testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person.

History: En. 91A-5-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-203; amd. Sec. 2400, Ch. 56, L. 2009.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

72-5-214 through 72-5-220 reserved.

72-5-221. Venue for proceedings for court appointment of guardian of minor. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

History: En. 91A-5-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-205.

72-5-222. Court appointment of guardian of minor — when allowed — priority of testamentary appointment. (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order.

(2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

History: En. 91A-5-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-204; amd. Sec. 6, Ch. 290, L. 1999.

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred. The court may appoint as guardian any person whose appointment would be in the best interests of the minor, including the minor's interest in continuity of care. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor.

History: En. 91A-5-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-206; amd. Sec. 7, Ch. 210, L. 2009.

Cross-References

Appointment of guardian ad litem, 25-5-301.
Best interests of child, 40-4-212.

72-5-224. Temporary guardian of minor. If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.

History: En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(3).

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in 2-15-1029, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

History: En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(1), (2), (4); amd. Sec. 2, Ch. 93, L. 1979; amd. Sec. 63, Ch. 449, L. 2005; amd. Sec. 8, Ch. 210, L. 2009; amd. Sec. 41, Ch. 358, L. 2017.

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-226 through 72-5-230 reserved.

72-5-231. Powers and duties of guardian of minor. Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) The guardian shall take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of 72-5-104. Any sums received must be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess must be paid at least annually to the conservator. Sums received by the guardian may not be used for compensation for the guardian's services except as approved by an order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the ward.

(4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule.

(5) Upon the death of a guardian's ward, the guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition, including burial, entombment, or cremation,

of the ward's physical remains and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death.

History: En. 91A-5-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-209; amd. Sec. 2, Ch. 279, L. 1997; amd. Sec. 1, Ch. 238, L. 2003.

Cross-References

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

72-5-232. Repealed. Sec. 26, Ch. 236, L. 2009.

History: En. 91A-5-211 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-211.

72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected. (1) A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, except as provided in subsection (2), adoption, marriage, or attainment of majority, but termination does not affect a guardian's liability for prior acts or a guardian's obligation to account for funds and assets of the guardian's ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(2) The guardian's authority and responsibility for a minor who dies while the minor is a ward of the guardian terminates when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects as provided in 72-5-231(5).

History: En. 91A-5-210 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-210; amd. Sec. 2, Ch. 238, L. 2003.

72-5-234. Procedure for resignation or removal — petition, notice, and hearing — representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in 2-15-1029, to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

History: En. 91A-5-212 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-212; amd. Sec. 64, Ch. 449, L. 2005; amd. Sec. 42, Ch. 358, L. 2017.

Part 3
Guardians of Incapacitated Persons

Part Cross-References

Appointment of guardian ad litem, 25-5-301.

Proxy decisionmakers, Title 50, ch. 5, part 13.

72-5-301. Consent to jurisdiction by acceptance of appointment. (1) By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding must be delivered to the guardian or mailed to the guardian by ordinary mail at the guardian's address as listed in the court records and to the guardian's address as then known to the petitioner.

History: En. 91A-5-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-305; amd. Sec. 2401, Ch. 56, L. 2009.

72-5-302. Testamentary appointment of guardian for incapacitated person — when effective — priorities. (1) The parent of an unmarried incapacitated person may appoint by will or other writing signed by the parent and attested by at least two witnesses a guardian of the incapacitated person. If both parents are dead or the surviving parent is adjudged incapacitated, a parental appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the incapacitated person and to the person having care of the person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) The spouse of a married incapacitated person may appoint by will or other writing signed by the spouse and attested by at least two witnesses a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or, in the case of nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. An effective appointment by a spouse has priority over an appointment by a parent.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(1), (2); amd. Sec. 18, Ch. 582, L. 1989.

72-5-303. Recognition of appointment of guardian by foreign will. An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this state.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(3); amd. Sec. 19, Ch. 582, L. 1989.

Cross-References

Effect of judicial record of another state, 26-3-203.

72-5-304. Objection by alleged incapacitated person to testamentary appointment. Upon the filing in the court in which the will was probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under 72-5-305, 72-5-306, 72-5-311 through 72-5-322, 72-5-324, and 72-5-325.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(4); amd. Sec. 20, Ch. 582, L. 1989; amd. Sec. 25, Ch. 236, L. 2009.

72-5-305. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Full guardian" means a guardian who possesses all the legal duties and powers enumerated in 72-5-321.

(2) "Guardian" includes a full guardian and a limited guardian.

(3) "Less restrictive alternative" means an approach to meeting a person's needs that restricts fewer rights of the person than would the appointment of a guardian. The term includes supported decisionmaking, appropriate technological assistance, and appointment of a representative payee.

(4) "Limited guardian" means a guardian who possesses fewer than all of the legal duties and powers of a full guardian and whose rights, powers, and duties have been specifically enumerated by the court.

(5) "Supported decisionmaking" means assistance from one or more persons of a person's choosing in:

(a) understanding the nature and consequences of potential personal and financial decisions, which enables the person to make the decisions; and

(b) communicating a decision, once made, if consistent with the person's wishes.

History: En. Sec. 1, Ch. 344, L. 1981; amd. Sec. 1, Ch. 40, L. 2021.

72-5-306. Purpose and basis for guardianship. Guardianship for an incapacitated person may be used only as is necessary to promote and protect the well-being of the person. The guardianship must be designed to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the extent that the person's actual mental and physical limitations require it. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court.

History: **En. Sec. 2, Ch. 344, L. 1981.**

72-5-307 through 72-5-310 reserved.

72-5-311. Venue for proceedings for court appointment of guardian. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

History: **En. 91A-5-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-302.**

Cross-References

Venue, Title 25, ch. 2.

72-5-312. Who may be guardian — priorities. (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private, nonprofit corporation nominated by the incapacitated person if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom the incapacitated person has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of the private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of the association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation that would be disqualified under subsections (4)(a) through (4)(c).

(5) If the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an agency is appointed guardian, the

court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency.

History: En. 91A-5-311 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-311; amd. Sec. 3, Ch. 344, L. 1981; amd. Sec. 2402, Ch. 56, L. 2009.

72-5-313. Visitor in guardianship proceedings defined. A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, social work, medical care, mental health care, pastoral care, education, or rehabilitation and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

History: En. 91A-5-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-308; amd. Sec. 4, Ch. 344, L. 1981.

72-5-314. Notices in guardianship proceedings. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing must be given to each of the following:

(a) the ward or the person alleged to be incapacitated and the ward's or person's spouse, parents, and adult children;

(b) any person who is serving as the ward's or person's guardian or conservator or who has the ward's or person's care and custody; and

(c) in case no other person is notified under subsection (1)(a), at least one of the ward's or person's closest adult relatives, if any can be found.

(2) Notice must be served personally on the alleged incapacitated person and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person must be given as provided in 72-1-301. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

History: En. 91A-5-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-309; amd. Sec. 2403, Ch. 56, L. 2009.

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in 2-15-1029, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it.

History: En. 91A-5-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 222, L. 1977; amd. Sec. 2, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-303; amd. Sec. 8, Ch. 344, L. 1981; amd. Sec. 65, Ch. 449, L. 2005; amd. Sec. 1, Ch. 184, L. 2007; amd. Sec. 43, Ch. 358, L. 2017.

72-5-316. Findings — order of appointment. (1) If the court is satisfied that the person for whom a guardianship is sought is incapacitated, that the identified needs of the person cannot be met by a less restrictive alternative, and that judicial intervention in the person's personal freedom of action and decision is necessary to meet essential requirements for the person's physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is satisfied that the allegedly incapacitated person could handle the essential requirements for physical health or safety if the person's financial resources were managed by another, it shall order that the petition be treated as a petition for a protective order under Title 72, chapter 5, part 4, and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order, the court shall make specific findings of fact.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order must specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order must specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created.

(3) An incapacitated person may not be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for the limitations. The order must state that all rights not specifically limited are retained by the incapacitated person.

History: En. 91A-5-304 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-304; amd. Sec. 9, Ch. 344, L. 1981; amd. Sec. 2404, Ch. 56, L. 2009; amd. Sec. 2, Ch. 40, L. 2021.

72-5-317. Temporary guardians. (1) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) If an appointed guardian is not effectively performing the guardian's duties or if there is no appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary guardian must state whether a full or limited temporary guardianship is being created and, in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

(3) If there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who would otherwise be ineligible under that provision to act as guardian. This subsection does not permit the appointment of a person or entity who has an actual conflict of interest in regard to the purpose for which the temporary guardianship is sought. A temporary guardian who is otherwise ineligible shall serve until a person or entity who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court to act as temporary guardian, but the temporary guardian may not serve for longer than 6 months.

(4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary limited guardian is entitled to exercise powers that are specifically granted to the temporary guardian in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended so long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this code concerning guardians apply to temporary guardians.

History: En. 91A-5-310 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-310; amd. Sec. 10, Ch. 344, L. 1981; amd. Sec. 2405, Ch. 56, L. 2009.

72-5-318. Request for notice — interested person. (1) An interested person who desires to be notified before any order is made in a guardianship proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and the person's address or that of the person's attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the alleged incapacitated person is an interested person in guardianship proceedings.

History: En. Sec. 5, Ch. 344, L. 1981; amd. Sec. 2406, Ch. 56, L. 2009.

72-5-319. Contents of petition for appointment of guardian. (1) The petition for appointment of a guardian must contain:

(a) the name, residence, and mailing address of the petitioner, the petitioner's relationship to the alleged incapacitated person, and the petitioner's interest in the matter;

(b) the name, residence, and mailing address of the alleged incapacitated person;

(c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated person, the approximate value and description of the property, including any compensation, pension, insurance, or allowance to which the person may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the incapacitated person or a conservator of the person's property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged incapacitated person;

(i) the reasons why the appointment of a guardian is sought, including:

(i) any less restrictive alternatives for meeting the alleged incapacitated person's needs that have been implemented or, if no less restrictive alternatives have been implemented, the reason why; and

(ii) the reason why a less restrictive alternative is insufficient to meet the alleged incapacitated person's needs;

(j) whether a limited guardianship or full guardianship is requested;

(k) the facts supporting the allegations of incapacity and the need for a guardian;

(l) the specific areas of protection and assistance requested and the limitation of rights requested to be included in the order of appointment;

(m) in the case of a petition for limited guardianship, the particular powers and areas of authority that the petition seeks to have vested in the limited guardian as provided in 72-5-320 and the term for which the limited guardianship is requested;

(n) in the case of a petition for full guardianship, the length of time the guardianship is expected to last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the petitioner believes that the requisites of that section are met and that the

appointment of a temporary guardian, pending the completion of guardianship proceedings, is necessary to protect the welfare of the alleged incapacitated person. The facts requiring appointment of a temporary guardian must be stated with specificity.

History: **En. Sec. 6, Ch. 344, L. 1981; amd. Sec. 2407, Ch. 56, L. 2009; amd. Sec. 3, Ch. 40, L. 2021.**

72-5-320. Purposes for establishment of limited guardianship. A petition seeking the establishment of a limited guardianship must specify the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed include:

(1) to care for and maintain the alleged incapacitated person;

(2) to assert and protect the rights and best interests of the alleged incapacitated person;

(3) to provide timely and informed consent to necessary medical procedures and procedures implemented in connection with habilitation and training programs;

(4) to assist in the acquisition of necessary training, habilitation, and education for the incapacitated person;

(5) to exercise any other powers, duties, or limitations in regard to the care of the incapacitated person or the management of the person's property that the petition explicitly specifies, which may not be greater than the powers a full guardian may exercise.

History: **En. Sec. 7, Ch. 344, L. 1981; amd. Sec. 2408, Ch. 56, L. 2009.**

72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to the guardian's possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or outside of this state.

(b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. This subsection (2)(c) does not authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order. The court may not grant that authority if it conflicts with the ward's wishes to the extent that those wishes can be determined. To determine the ward's wishes, the court shall determine by a preponderance of evidence if the ward's substituted judgment, as applied to the ward's current circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.

(d) If a conservator for the estate of the ward has not been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that person's duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward. However, the full guardian may not use funds from the ward's estate for room and board that the full guardian or the full guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of the ward and of the estate that has been subject to the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this chapter, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which the limited guardian is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) Except as provided in subsection (6), a full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

(6) (a) If the court has found that a ward has a primary diagnosis of a major neurocognitive disorder, as defined in the fifth edition of the diagnostic and statistical manual of mental disorders adopted by the American psychiatric association, and because of this disorder the ward is unwilling or unable to give informed consent to treatment, a full guardian or limited guardian may seek admission of the ward for stabilization and treatment to a hospital, skilled nursing facility, or another appropriate treatment facility other than the Montana state hospital.

(b) If the ward is admitted to the Montana mental health nursing care center, the court shall review every 90 days whether the Montana mental health nursing care center is the appropriate placement for the ward or whether a less restrictive placement exists.

(7) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death.

History: **En. 91A-5-312 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-312; amd. Sec. 11, Ch. 344, L. 1981; amd. Sec. 1, Ch. 401, L. 1983; amd. Sec. 3, Ch. 238, L. 2003; amd. Sec. 2, Ch. 480, L. 2007; amd. Sec. 2, Ch. 237, L. 2009; amd. Sec. 1, Ch. 381, L. 2015; amd. Sec. 4, Ch. 40, L. 2021.**

72-5-322. Petition of guardian for treatment of ward. (1) If a guardian believes that the guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward against the ward's will for more than 72 hours.

(2) The ward is entitled to the assignment of counsel, in accordance with the provisions of the Montana Public Defender Act, Title 47, chapter 1, and a hearing along with all the other rights guaranteed to a person with a mental disorder and who requires commitment under 53-21-114, 53-21-115, 53-21-119, and 53-21-120.

History: En. 91A-5-314 by Sec. 3, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-314; amd. Sec. 39, Ch. 490, L. 1997; amd. Sec. 66, Ch. 449, L. 2005.

72-5-323. Repealed. Sec. 26, Ch. 236, L. 2009.

History: En. 91A-5-313 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-313.

72-5-324. Termination of appointment — how effected — certain liabilities and obligations not affected. (1) (a) Except as provided in subsection (1)(b), the authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(b) The guardian's authority and responsibility for an incapacitated person who dies while the person is a ward of the guardian terminate when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects, as provided in 72-5-321(7).

(2) Termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for funds and assets of the ward.

History: En. 91A-5-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-306; amd. Sec. 4, Ch. 238, L. 2003; amd. Sec. 2, Ch. 381, L. 2015.

72-5-325. Petition for removal or resignation of guardian — termination of incapacity — appointment of successor guardian. (1) On petition of the ward or any person interested in the ward's welfare, the court, after hearing, may remove a guardian if in the best interests of the ward. On petition of the guardian, the court, after hearing, may accept a resignation.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding 6 months, during which a petition for an adjudication that the ward is no longer incapacitated may not be filed without special leave. Subject to that restriction, the ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated and for termination of the guardianship. A request for an order may also be made informally to the court, and any person who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court.

(3) Upon removal, resignation, or death of the guardian or if the guardian is determined to be incapacitated, the court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian.

History: En. 91A-5-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-307; amd. Sec. 21, Ch. 582, L. 1989.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 4
Protection of Property of Minors and Persons Under Disability

Part Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.
Minors, Title 41.
Persons with developmental disabilities, Title 53, ch. 20.
Mentally ill, Title 53, ch. 21.

72-5-401. Original petition for appointment or protective order — who may petition. The person to be protected, any person who is interested in that person's estate, affairs, or welfare, including that person's parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for the appointment of a conservator or for other appropriate protective order.

History: **En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-404(1); amd. Sec. 2409, Ch. 56, L. 2009.**

72-5-402. Contents of petition. (1) The petition must set forth to the extent known:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the person to be protected;

(c) the name and address of that person's guardian, if any;

(d) the name and address of that person's nearest relative known to the petitioner;

(e) a general statement of that person's property with an estimate of the value of the property, including any compensation, insurance, pension, or allowance to which the person is entitled; and

(f) the reason why appointment of a conservator or other protective order is necessary.

(2) If the appointment of a conservator is requested, the petition also must set forth the name and address of the person whose appointment is sought and the basis of the person's priority for appointment.

(3) The petition must affirm that no mental health care advance directive exists or, if a directive exists, the directive must be attached to the petition.

History: **En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-404(2); amd. Sec. 2410, Ch. 56, L. 2009; amd. Sec. 21, Ch. 329, L. 2011.**

72-5-403. Notice — waiver. (1) On a petition for appointment of a conservator or other protective order, the person to be protected and the person's spouse or, if none, the person's parents must be served personally with notice of the proceeding at least 14 days before the date of hearing if they can be found within the state, or if they cannot be found within the state, they must be given notice in accordance with 72-1-301. Waiver by the person to be protected is not effective unless the person attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order and of any subsequent hearing must be given to any person who has filed a request for notice under 72-5-404 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection (1), notice must be given in accordance with 72-1-301.

History: **En. 91A-5-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-405; amd. Sec. 2411, Ch. 56, L. 2009.**

72-5-404. Request for notice — interested person. (1) An interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and the person's address or that of the person's attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

History: **En. 91A-5-406 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-406; amd. Sec. 2412, Ch. 56, L. 2009.**

72-5-405. Exclusive and concurrent jurisdiction of particular court after petition and notice. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person that is subject to the laws of this state is managed, expended, or distributed to or for the use of the protected person or any of the person's dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and the person's title to any property or claim.

History: **En. 91A-5-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-402; amd. Sec. 2413, Ch. 56, L. 2009.**

72-5-406. Consent to jurisdiction by acceptance of appointment as conservator. (1) By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(2) Notice of any proceeding must be delivered to the conservator or mailed to the conservator by certified mail at the conservator's address as listed in the petition for appointment or as reported to the court and to the conservator's address as then known to the petitioner.

History: En. 91A-5-413 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-413; amd. Sec. 2414, Ch. 56, L. 2009.

72-5-407. Venue. Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where the person has property.

History: En. 91A-5-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-403; amd. Sec. 2415, Ch. 56, L. 2009.

Cross-References

Venue, Title 25, ch. 2.

72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in 2-15-1029, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

History: En. 91A-5-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-407; amd. Sec. 1, Ch. 208, L. 1985; amd. Sec. 4, Ch. 362, L. 1985; amd. Sec. 67, Ch. 449, L. 2005; amd. Sec. 2, Ch. 184, L. 2007; amd. Sec. 44, Ch. 358, L. 2017.

72-5-409. Cause for appointment of conservator or issuance of protective order. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make another protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection that cannot otherwise be provided, that a minor has or may have business affairs that may be jeopardized or prevented by the person's minority, or that funds are needed for the person's support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that:

(a) the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property that will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

History: En. 91A-5-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-401; amd. Sec. 2416, Ch. 56, L. 2009.

72-5-410. Who may be appointed conservator — priorities. (1) The court may appoint an individual or a corporation with general power to serve as trustee as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if the person is 14 years of age or older and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom the protected person has resided for more than 6 months prior to the filing of the petition;

(g) a person nominated by the person who is caring for the person or paying benefits to the person;

(h) a conservator corporation organized under Title 35, chapter 2;

(i) the public administrator.

(2) A person in priorities listed in subsections (1)(a) and (1)(c) through (1)(f) may nominate in writing a person to serve in that person's stead.

(3) With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

History: En. 91A-5-410 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-410; amd. Sec. 5, Ch. 362, L. 1985; amd. Sec. 2417, Ch. 56, L. 2009.

72-5-411. Bond — court may require — amount. (1) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law with sureties that it specifies.

(2) Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(3) The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

History: En. 91A-5-411 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-411; amd. Sec. 2418, Ch. 56, L. 2009.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-5-412. Terms and requirements of bond. (1) The following requirements and provisions apply to any bond required under 72-5-411:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding must be delivered to the surety or mailed to the surety by certified mail at the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner.

(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator.

(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) A proceeding may not be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-5-412 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-412; amd. Sec. 2419, Ch. 56, L. 2009.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-5-413. Petitions for orders subsequent to appointment — interested persons. (1) A person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(a) requiring bond or security or additional bond or security or reducing bond;

(b) requiring an accounting for the administration of the trust;

(c) directing distribution;

(d) removing the conservator and appointing a temporary or successor conservator; or

(e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning the conservator's fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution, or agency that is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of the protected person.

History: En. 91A-5-416 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-416; amd. Sec. 2420, Ch. 56, L. 2009.

72-5-414. Resignation or removal of conservator for cause — successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or may accept the resignation of a conservator. After the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

History: En. 91A-5-415 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-415; amd. Sec. 5, Ch. 6, L. 1979; amd. Sec. 2421, Ch. 56, L. 2009.

72-5-415. Public administrator as conservator when no other appropriate person. (1) Whenever a professional person, as defined in 53-21-102, has reason to believe that any person is in need of the appointment of a conservator for the effective management of the person's property or affairs under this part and that the person has no relative, friend, or other appropriate person who is able and willing to serve as a conservator for the person, the professional person shall notify the public administrator.

(2) Whenever the public administrator is notified under subsection (1) of the need for the appointment of a conservator and reasonable cause exists, the public administrator shall file a petition for appointment of the public administrator as conservator of the person.

History: En. Secs. 1, 2, Ch. 362, L. 1985; amd. Sec. 2422, Ch. 56, L. 2009.

Cross-References

Office of Public Administrator, 7-4-3004; Title 72, ch. 15.

72-5-416 through 72-5-420 reserved.

72-5-421. Powers of court as to property and affairs of protected persons generally — temporary conservatorship. The court has the following powers that may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the protected person's benefit or the benefit of the protected person's dependents. If the court finds that the welfare of the person requires immediate action, it may, with or without notice, appoint a temporary conservator for the person for a specified period not to exceed 6 months. The court may designate the authority of the temporary conservator, depending on the needs and circumstances of the

protected person. The court may not invest a temporary conservator with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary conservator must state the specific powers and duties of the temporary conservator.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor that are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs that the person could exercise if present and not under disability, except the power to make a will. These powers include but are not limited to the power to:

(a) make gifts;

(b) convey or release the person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(c) exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;

(d) enter into contracts;

(e) create revocable or irrevocable trusts of property of the estate that may extend beyond the person's disability or life;

(f) exercise options of the disabled person to purchase securities or other property;

(g) exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and surrender the policies for their cash value;

(h) exercise the person's right to an elective share in the estate of the person's deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person and that the protected person either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section, determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

History: En. 91A-5-408 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-408; amd. Sec. 1, Ch. 42, L. 2007.

72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

(a) payment, delivery, deposit, or retention of funds or property;

(b) sale, mortgage, lease, or other transfer of property;

(c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or

(d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving the protected person's estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of the protected person's disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, upon

appointment, has the authority conferred by the order and serves until discharged by order after report to the court of all matters done pursuant to the order of appointment.

History: En. 91A-5-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-409; amd. Sec. 6, Ch. 6, L. 1979; amd. Sec. 2423, Ch. 56, L. 2009.

72-5-423. Fiduciary duty of conservator. In the exercise of a conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

History: En. 91A-5-417 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-417; amd. Sec. 2424, Ch. 56, L. 2009.

Cross-References

Duties of trustees, Title 72, ch. 38, part 8.

72-5-424. Inventory and records. (1) Within 90 days after appointment, a conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person, together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy of the inventory to the protected person if the protected person can be located, has attained 14 years of age, and has sufficient mental capacity to understand these matters and to any parent or guardian with whom the protected person resides.

(2) The conservator shall keep suitable records of the conservator's administration and exhibit the records on request of any interested person.

History: En. 91A-5-418 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-418; amd. Sec. 2425, Ch. 56, L. 2009.

72-5-425. Title by appointment as conservator — appointment not transfer for certain purposes. (1) The appointment of a conservator vests in the conservator title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property previously held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of the protected person's rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

History: En. 91A-5-420 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-420; amd. Sec. 7, Ch. 6, L. 1979; amd. Sec. 2426, Ch. 56, L. 2009.

Cross-References

Duties of trustees, Title 72, ch. 38, part 8.

72-5-426. Letters as evidence of transfer of assets — recording. (1) Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or the protected person's successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person.

History: En. 91A-5-421 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-421; amd. Sec. 2427, Ch. 56, L. 2009.

72-5-427. Powers of conservator in administration. (1) A conservator has all of the powers conferred in this section and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under 18 years of age, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in 72-5-231 until the minor attains 18 years of age or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Title 72, chapter 5, part 2.

(2) A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, may act without court authorization or confirmation to:

(a) collect, hold, and retain assets of the estate, including land in another state, until in the conservator's judgment disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary capacity holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank, including a bank operated by the conservator;

(g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;

(m) vote a security in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise or advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances made;

(s) pay or contest any claim or settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the person's guardian or, if none, to a relative or other person with custody of the person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of administrative duties, act upon their recommendation without independent investigation, and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties; and

(y) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

History: **En. 91A-5-424 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-424; amd. Sec. 2428, Ch. 56, L. 2009.**

72-5-428. Distributive powers and duties of conservator generally. (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and the protected person's dependents in accordance with the following principles:

(a) The conservator shall consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian is deriving personal financial benefit, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator shall expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:

(i) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage the person's affairs and the estate that has been conserved for the person;

(ii) the accustomed standard of living of the protected person and members of the person's household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this subsection (1) may be paid by the conservator to any person, including the protected person, to reimburse the person for expenditures that the conservator might have made or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and when advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts that do not exceed in total for any year 20% of the income from the estate.

History: **En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-425(1), (2); amd. Sec. 2429, Ch. 56, L. 2009.**

72-5-429. Distribution upon attainment of majority, termination of disability, or death of protected person. (1) When a minor who has not been adjudged disabled under 72-5-409(2) attains majority, the minor's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(2) When the conservator is satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(3) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person that may have come into the conservator's possession, inform the executor or a beneficiary named in the will that the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to the estate. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute

the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator and after notice to any person demanding notice under 72-3-106 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section has the effect of an order of appointment of a personal representative as provided in 72-3-222, 72-3-223(1), and parts 5 through 10 of chapter 3, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History: En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-425(3) thru (5); amd. Sec. 2430, Ch. 56, L. 2009.

72-5-430. Enlargement or limitation of powers of conservator by court. (1) Subject to the restrictions in 72-5-421(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on the conservator by 72-5-427, 72-5-428, and 72-5-429, any power that the court itself could exercise under 72-5-421(2) and (3).

(2) The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court and may at any time relieve the conservator of any limitation. If the court limits any power conferred on the conservator by 72-5-427, 72-5-428, or 72-5-429, the limitation must be endorsed upon the conservator's letters of appointment.

History: En. 91A-5-426 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-426; amd. Sec. 2431, Ch. 56, L. 2009.

72-5-431. Preservation of estate plan — right to inspect will. In investing the estate and in selecting assets of the estate for distribution under 72-5-428 and in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court shall take into account any known estate plan of the protected person, including the protected person's will, any revocable trust of which the protected person is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the protected person's death to another or others that the protected person may have originated. The conservator may examine the will of the protected person.

History: En. 91A-5-427 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-427; amd. Sec. 2432, Ch. 56, L. 2009.

72-5-432. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

History: En. 91A-5-414 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-414.

72-5-433. Claims against protected person — presentment, allowance, and payment — priorities. (1) A conservator shall pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person after the appointment, the moving party shall give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference must be given to prior claims for the care, maintenance, and education of the protected person or the protected person's dependents and existing claims for expenses of administration.

History: **En. 91A-5-428 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-428; amd. Sec. 2433, Ch. 56, L. 2009.**

72-5-434. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to a conservator, to the conservator's spouse, agent, or attorney, or to any corporation or trust in which the conservator has a substantial beneficial interest or any transaction that is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

History: **En. 91A-5-422 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-422; amd. Sec. 2434, Ch. 56, L. 2009.**

72-5-435. Persons dealing with conservator — protection. (1) A person who in good faith either assists a conservator or deals with the conservator for value in any transaction other than those requiring a court order as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators that are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or laws simplifying transfers of securities by fiduciaries.

(3) The protection under this section is not a substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History: **En. 91A-5-423 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-423; amd. Sec. 23, Ch. 582, L. 1989; amd. Sec. 2435, Ch. 56, L. 2009.**

72-5-436. Claims arising during conservatorship — individual liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in the conservator's fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if the conservator is personally at fault.

(3) Claims based on contracts entered into by a conservator in a fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in the conservator's fiduciary capacity, whether or not the conservator is individually liable.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action.

History: **En. 91A-5-429 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-429; amd. Sec. 2436, Ch. 56, L. 2009.**

72-5-437. Termination of conservatorship. The protected person, the protected person's personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to the former protected person's successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or the former protected person's successors to evidence the transfer.

History: **En. 91A-5-430 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-430; amd. Sec. 2437, Ch. 56, L. 2009.**

72-5-438. Accounts — final and intermediate. (1) Each conservator shall account to the court for administration of the trust not less than annually, unless the court directs otherwise, upon resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator shall account to the court or to the formerly protected person or the successors of that person.

(2) Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the hearing; and an order, following notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate, to be made in any manner the court specifies.

History: En. 91A-5-419 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-419; amd. Sec. 2, Ch. 401, L. 1983; amd. Sec. 22, Ch. 582, L. 1989.

72-5-439. Payment of debt and delivery of property to foreign conservator without local proceedings. (1) A person indebted to a protected person or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other fiduciary appointed by a court of the state or residence of the protected person upon being presented with proof of the conservator's, guardian's, or fiduciary's appointment and an affidavit made by the conservator, guardian, or fiduciary or on the conservator's, guardian's, or fiduciary's behalf stating that:

(a) no protective proceeding relating to the protected person is pending in this state; and

(b) the foreign conservator is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

History: En. 91A-5-431 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-431; amd. Sec. 2438, Ch. 56, L. 2009.

72-5-440 through 72-5-443 reserved.

72-5-444. Petition to authorize proposed action — substituted judgment. (1) The conservator or other interested person may file a petition under 72-5-444 through 72-5-450 for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(a) benefiting the protected person or the estate;

(b) minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the protected person; or

(c) providing gifts for any purposes and to any charities, relatives (including the protected person's spouse, descendants, or ancestors), friends, or other objects of bounty as would be likely beneficiaries of gifts from the protected person.

(2) The action proposed in the petition may include but is not limited to the following:

(a) making gifts of principal or income, or both, of the estate, outright or in trust;

(b) conveying or releasing the protected person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(c) exercising or releasing the protected person's powers as donee of a power of appointment;

(d) entering into contracts;

(e) creating for the benefit of the protected person or others revocable or irrevocable trusts of the property of the estate that may extend beyond the protected person's disability or life;

(f) transferring to a trust created by the conservator or protected person any property unintentionally omitted from the trust;

(g) exercising options of the protected person to purchase or exchange securities or other property;

(h) exercising the rights of the protected person to elect benefit or payment options, to terminate or to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) life insurance policies, plans, or benefits;

(ii) annuity policies, plans, or benefits;

(iii) mutual fund and other dividend investment plans; or

(iv) retirement, profit sharing, and employee welfare plans and benefits;

(i) exercising the right of the protected person to disclaim any interest that may be disclaimed;

(j) exercising the right of the protected person to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court may not authorize or require the conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:

(i) evidences an intent to reserve the right of revocation or modification exclusively to the protected person;

(ii) provides expressly that a conservator may not revoke or modify the trust; or

(iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust.

(3) If an existing trust has been or is being amended, the order of the court may authorize the conservator to execute, after the trust amendment, a new "pour over" will or codicil that devises to the trustee of the amended trust other property of the protected person that had not previously been transferred to the trust.

History: En. Sec. 133, Ch. 264, L. 2013.

72-5-445. Notice of hearing. Notice of the hearing of the petition must be given, regardless of age, for the period and in the manner provided by 72-1-301 to all of the following:

(1) the persons required to be named in a petition for the appointment of a conservator;

(2) so far as is known to the petitioner, beneficiaries under any document executed by the protected person that may have testamentary effect unless the court for good cause dispenses with such notice;

(3) if the proposed action involves a trust, to all persons entitled to receive notice with respect to such an action under Title 72, chapter 38;

(4) so far as is known to the petitioner, the persons who, if the protected person were to die immediately, would be the protected person's heirs under the laws of intestate succession unless the court for good cause dispenses with the notice; and

(5) other persons as the court may order.

History: En. Sec. 134, Ch. 264, L. 2013.

72-5-446. Consent or lack of capacity of protected person — adequate provision for protected person and dependents. The court may make an order authorizing or requiring the proposed action under 72-5-444 through 72-5-450 only if the court determines all of the following:

(1) the protected person either:

(a) is not opposed to the proposed action; or

(b) if opposed to the proposed action, lacks legal capacity for the proposed action; and

(2) either the proposed action will have no adverse effect on the estate or the estate remaining after the proposed action is taken will be adequate to provide for the needs of the protected person and for the support of those legally entitled to support, maintenance, and education from the protected person, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the protected person and of those legally entitled to support, maintenance, and education from the protected person.

History: En. Sec. 135, Ch. 264, L. 2013; amd. Sec. 30, Ch. 55, L. 2015.

72-5-447. Circumstances to be considered in determining whether to authorize or require proposed action. In determining whether to authorize or require a proposed action under 72-5-444 through 72-5-450, the court shall take into consideration all of the relevant circumstances, which may include but are not limited to the following:

(1) whether the protected person has legal capacity for the proposed transaction and, if not, the probability of the protected person's recovery of legal capacity;

(2) the past donative declarations, practices, and conduct of the protected person;

(3) the traits of the protected person;

(4) the relationship and intimacy of the prospective donees with the protected person, their standards of living, and the extent to which they would be natural objects of the protected person's bounty by any objective test based on the relationship, intimacy, and standards of living;

(5) the wishes of the protected person;

(6) any known estate plan of the protected person, including but not limited to:

(a) the protected person's will;

(b) any trust of which the protected person is the settlor or beneficiary;

(c) any power of appointment created by or exercisable by the protected person; and

(d) any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the protected person's death to another or others that the protected person may have originated;

(7) the manner in which the estate would devolve upon the protected person's death, giving consideration to the age and the mental and physical condition of the protected person, the prospective devisees or heirs of the protected person, and the prospective donees;

(8) the value, liquidity, and productiveness of the estate;

(9) the minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration;

(10) changes of tax laws and other laws that would likely have motivated the protected person to alter the protected person's estate plan;

(11) the likelihood from all the circumstances that the protected person as a reasonably prudent person would take the proposed action if the protected person had the capacity to do so;

(12) whether any beneficiary is the spouse of the protected person;

(13) whether a beneficiary has committed physical abuse, neglect, false imprisonment, or financial abuse against the protected person after the protected person was substantially unable to manage his or her financial resources or resist fraud or undue influence and whether the protected person's disability persisted throughout the time of the hearing on the proposed action; or

(14) the mandate of 72-5-446 that if the proposed action is taken, the remaining assets of the estate will be adequate to provide for the needs of the protected person and for the support, maintenance and education of those legally entitled to receive such from the protected person.

History: En. Sec. 136, Ch. 264, L. 2013.

72-5-448. Order. After hearing, the court in its discretion may approve, modify and approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose of assets or take other action as provided in the court's order.

History: En. Sec. 137, Ch. 264, L. 2013.

72-5-449. No duty to propose action. Nothing in 72-5-444 through 72-5-450 imposes any duty on the conservator to propose any action under 72-5-444 through 72-5-450, and the conservator is not liable for failure to propose any action under 72-5-444 through 72-5-450.

History: En. Sec. 138, Ch. 264, L. 2013.

72-5-450. Production of protected person's other relevant estate plan documents. (1) As used in this section, "estate plan of the protected person" includes but is not limited to:

(a) the protected person's will;

(b) any trust of which the protected person is the settlor or beneficiary;

(c) any power of appointment created by or exercisable by the protected person; and

(d) any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the protected person's death to another or others that the protected person may have originated.

(2) Notwithstanding 26-1-803 or any case law relating to the attorney-client privilege, the court in its discretion may order that any person having possession of any document constituting all or part of the estate plan of the protected person shall deliver the document to the court for examination by the court and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under 72-5-444 through 72-5-450 in connection with the petition filed under 72-5-444 through 72-5-450.

(3) Unless the court otherwise orders, a person who examines any document produced pursuant to an order under this section may not disclose the contents of the document to any other person. If that disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

(4) For good cause, the court may order that a document constituting all or part of the estate plan of the protected person, whether or not produced pursuant to an order under this section, must be delivered for safekeeping to the custodian designated by the court. The court may impose conditions that it determines are appropriate for holding and safeguarding the document. The court may authorize the conservator to take any action a depositor may take under Montana law.

History: En. Sec. 139, Ch. 264, L. 2013.

Part 5
Powers of Attorney

Part Cross-References

Agency, Title 28, ch. 10.
Proxy decisionmakers, Title 50, ch. 5, part 13.
Uniform Power of Attorney Act, Title 72, ch. 31, part 3.

72-5-501. When health care power of attorney not affected by disability. (1) A durable health care power of attorney is a power of attorney by which a principal designates another as the principal's attorney-in-fact or agent in writing and the writing contains the words, "This health care power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time" or "This health care power of attorney becomes effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred must be exercisable notwithstanding the principal's subsequent disability or incapacity and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

(2) If a guardian is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the guardian as well as the principal. The guardian has the same power to revoke or amend the health care power of attorney that the principal would have had if the principal were not disabled or incapacitated. A principal may nominate, by a durable health care power of attorney, the guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable health care power of attorney except for good cause or disqualification.

History: En. 91A-5-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-501; amd. Sec. 1, Ch. 283, L. 1985; amd. Sec. 24, Ch. 582, L. 1989; amd. Sec. 2439, Ch. 56, L. 2009; amd. Sec. 26, Ch. 109, L. 2011.

72-5-502. Health care power of attorney not revoked until notice. (1) The disability or incapacity of a principal who has previously executed a health care power of attorney that is not a durable health care power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power.

(2) As to acts undertaken in good faith reliance on a health care power of attorney, an affidavit executed by the attorney-in-fact or agent stating that the attorney-in-fact or agent did not have, at the time of exercising the power, actual knowledge of the termination of the power by revocation or of the principal's disability or incapacity is proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section does not affect any provision in a health care power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

History: En. 91A-5-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-502; amd. Sec. 2, Ch. 283, L. 1985; amd. Sec. 2440, Ch. 56, L. 2009; amd. Sec. 27, Ch. 109, L. 2011.

Part 6
Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

72-5-601. Short title. This part may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

History: En. Sec. 1, Ch. 236, L. 2009.

72-5-602. Definitions. In this part, the following definitions apply:

(1) "Adult" means an individual who has attained 18 years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under 53-20-141, 53-21-141, or Title 72, chapter 5, part 4.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Title 72, chapter 5, part 3.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person", except in the term incapacitated person or protected person, means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, a government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

History: En. Sec. 2, Ch. 236, L. 2009.

72-5-603. International application. A court of this state may treat a foreign country as if it were a state for the purpose of applying 72-5-601 through 72-5-606, 72-5-611 through 72-5-619, 72-5-624, 72-5-625, 72-5-636, and 72-5-637.

History: En. Sec. 3, Ch. 236, L. 2009.

72-5-604. Communication between courts. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this part. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

History: En. Sec. 4, Ch. 236, L. 2009.

72-5-605. Cooperation between courts. (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) hold an evidentiary hearing;

(b) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) order that an evaluation or assessment be made of the respondent;

(d) order any appropriate investigation of a person involved in a proceeding;

(e) forward to the court of this state a certified copy of the transcript or other record of a hearing under subsection (1)(a) or any other proceeding, any evidence otherwise produced under subsection (1)(b), and any evaluation or assessment prepared in compliance with an order under subsection (1)(c) or (1)(d);

(f) issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(g) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. 164.504.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

History: En. Sec. 5, Ch. 236, L. 2009.

72-5-606. Taking testimony in another state. (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

History: En. Sec. 6, Ch. 236, L. 2009.

72-5-607 through 72-5-610 reserved.

72-5-611. Definitions — significant connection factors. (1) In 72-5-611 through 72-5-619, the following definitions apply:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian, or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under 72-5-613 and 72-5-624(5) whether a respondent has a significant connection with a particular state, the court shall consider:

(a) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) the location of the respondent's property; and

(d) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

History: En. Sec. 7, Ch. 236, L. 2009.

72-5-612. Exclusive basis. Sections 72-5-611 through 72-5-619 provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

History: En. Sec. 8, Ch. 236, L. 2009.

72-5-613. Jurisdiction. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(a) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in 72-5-616;

(3) this state does not have jurisdiction under either subsection (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under 72-5-614 are met.

History: En. Sec. 9, Ch. 236, L. 2009.

72-5-614. Special jurisdiction. (1) A court of this state lacking jurisdiction under 72-5-613(1) through (3) has special jurisdiction to do any of the following:

(a) appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this state;

(b) issue a protective order with respect to real or tangible personal property located in this state;

(c) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to 72-5-624.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

History: En. Sec. 10, Ch. 236, L. 2009.

72-5-615. Exclusive and continuing jurisdiction. Except as otherwise provided in 72-5-614, a court that has appointed a guardian or issued a protective order consistent with this part has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

History: En. Sec. 11, Ch. 236, L. 2009.

72-5-616. Appropriate forum. (1) A court of this state having jurisdiction under 72-5-613 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) any expressed preference of the respondent;

(b) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(c) the length of time the respondent was physically present in or was a legal resident of this or another state;

(d) the distance of the respondent from the court in each state;

(e) the financial circumstances of the respondent's estate;

(f) the nature and location of the evidence;

(g) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) the familiarity of the court of each state with the facts and issues in the proceeding; and

(i) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

History: **En. Sec. 12, Ch. 236, L. 2009.**

72-5-617. Jurisdiction declined by reason of conduct. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) decline to exercise jurisdiction;

(b) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) continue to exercise jurisdiction after considering:

(i) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) whether it is a more appropriate forum than the court of any other state under the factors set forth in 72-5-616(3); and

(iii) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of 72-5-613.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this part.

History: **En. Sec. 13, Ch. 236, L. 2009.**

72-5-618. Notice of proceeding. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

History: **En. Sec. 14, Ch. 236, L. 2009.**

72-5-619. Proceedings in more than one state. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under 72-5-614(1)(a) or (1)(b), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under 72-5-613, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to 72-5-613 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under 72-5-613, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the

other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

History: En. Sec. 15, Ch. 236, L. 2009.

72-5-620 through 72-5-623 reserved.

72-5-624. Transfer of guardianship or conservatorship to another state. (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2) Notice of a petition under subsection (1) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1).

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) the protected person is physically present in or is reasonably expected to move permanently to the other state or the protected person has a significant connection to the other state considering the factors in 72-5-611(2);

(b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to 72-5-625; and

(b) the documents required to terminate a guardianship or conservatorship in this state.

History: En. Sec. 16, Ch. 236, L. 2009.

72-5-625. Accepting guardianship or conservatorship transferred from another state. (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to 72-5-624, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1).

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) unless:

(a) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) the guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to 72-5-624 transferring the proceeding to this state.

(6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Title 72, chapter 5, part 3 or 4, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

History: En. Sec. 17, Ch. 236, L. 2009.

72-5-626 through 72-5-628 reserved.

72-5-629. Registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

History: En. Sec. 18, Ch. 236, L. 2009.

72-5-630. Registration of protective orders. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

History: En. Sec. 19, Ch. 236, L. 2009.

72-5-631. Effect of registration. (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under this part and other law of this state to enforce a registered order.

History: En. Sec. 20, Ch. 236, L. 2009.

72-5-632 through 72-5-635 reserved.

72-5-636. Uniformity of application and construction. In applying and construing this part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: En. Sec. 21, Ch. 236, L. 2009.

72-5-637. Relation to Electronic Signatures in Global and National Commerce Act. This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: En. Sec. 22, Ch. 236, L. 2009.

72-5-638. Transitional provision. (1) This part applies to guardianship and protective proceedings begun on or after October 1, 2009.

(2) Sections 72-5-601 through 72-5-606, 72-5-624, 72-5-625, 72-5-629 through 72-5-631, 72-5-636, and 72-5-637 apply to proceedings begun before October 1, 2009, regardless of whether a guardianship or protective order has been issued.

History: En. Sec. 23, Ch. 236, L. 2009.

CHAPTER 6
NONPROBATE TRANSFERS ON DEATH

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Part 1
Provisions Relating to Effect of Death

72-6-101. Renumbered 72-9-101. Code Commissioner, 1993.

72-6-102. Renumbered 72-9-102. Code Commissioner, 1993.

72-6-103. Renumbered 72-9-103. Code Commissioner, 1993.

72-6-104 through 72-6-106 reserved.

72-6-107. Renumbered 72-9-107. Code Commissioner, 1993.

72-6-108. Renumbered 72-9-108. Code Commissioner, 1993.

72-6-109. Renumbered 72-9-109. Code Commissioner, 1993.

72-6-110. Renumbered 72-9-110. Code Commissioner, 1993.

72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, transfer on death deed, as defined in 72-6-402, marital property agreement, beneficiary designation, as provided in 61-3-226, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state.

History: En. Sec. 83, Ch. 494, L. 1993; amd. Sec. 3, Ch. 258, L. 2007; amd. Sec. 81, Ch. 313, L. 2019; amd. Sec. 3, Ch. 130, L. 2021.

72-6-112. Liability of nonprobate transferees for creditor claims and statutory allowances. (1) In this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following order of priority:

(a) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(c) other nonprobate transferees, in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devises under it.

(5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section must be commenced within 1 year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

History: En. Sec. 82, Ch. 313, L. 2019.

72-6-113 reserved.

72-6-114. Renumbered 72-9-114. Code Commissioner, 1993.

72-6-115. Renumbered 72-9-115. Code Commissioner, 1993.

72-6-116. Renumbered 72-9-116. Code Commissioner, 1993.

72-6-117 through 72-6-119 reserved.

72-6-120. Renumbered 72-9-120. Code Commissioner, 1993.

72-6-121. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. Sec. 1, Ch. 258, L. 2007; amd. Sec. 1, Ch. 76, L. 2011.

72-6-122. Repealed. Sec. 162, Ch. 264, L. 2013.

History: En. Sec. 2, Ch. 258, L. 2007.

72-6-123. Repealed. Sec. 105, Ch. 313, L. 2019.

History: En. Sec. 140, Ch. 264, L. 2013.

Part 2
Multiple-Party Accounts

Part Cross-References

Ownership by several persons — types, 70-1-306.
Joint interest defined, 70-1-307.

72-6-201. Definitions. In this part, the following definitions apply:

(1) "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of:

(a) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(b) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment that complies with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; however, for purposes of this part, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions of the contract of deposit, including the type of account, the parties to the account, and the form of the contract.

History: En. Sec. 84, Ch. 494, L. 1993; amd. Sec. 29, Ch. 592, L. 1995.

72-6-202. Limitation on scope of part. This part does not apply to:

(1) an account established for a partnership, joint venture, or other organization for a business purpose;

(2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

History: En. Sec. 85, Ch. 494, L. 1993.

72-6-203. Types of account — existing accounts. (1) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to 72-6-212(3), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(2) An account established before, on, or after October 1, 1993, whether in the form prescribed in 72-6-204 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of this part, and is governed by this part.

History: En. Sec. 86, Ch. 494, L. 1993.

72-6-204. Forms. (1) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this part applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

....

OWNERSHIP [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent. However, any one party may withdraw the entire amount on deposit in the account.

CHANGING TERMS OF ACCOUNT [Select One and Each Party Initial]:

..... MULTIPLE-PARTY ACCOUNT'S TERMS MAY BE CHANGED BY A SINGLE PARTY

..... MULTIPLE-PARTY ACCOUNT'S TERMS MAY BE CHANGED ONLY BY AGREEMENT OF ALL PARTIES

RIGHTS AT DEATH [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

....

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

....

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or More Agents]:

....

[Select One And Initial]:

..... AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(2) A contract of deposit that does not contain provisions in substantially the form provided in subsection (1) is governed by the provisions of this part applicable to the type of account that most nearly conforms to the depositor's intent.

History: **En. Sec. 87, Ch. 494, L. 1993; amd. Sec. 3, Ch. 279, L. 1997.**

72-6-205. Designation of agent. (1) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(2) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(3) Death of the sole party or last-surviving party terminates the authority of an agent.

History: **En. Sec. 88, Ch. 494, L. 1993.**

Cross-References

Agency, Title 28, ch. 10.

72-6-206. Applicability of beneficial ownership provisions. The provisions of 72-6-211 through 72-6-214 and 72-6-216 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors and do not apply to the right of those persons to payment as determined by the terms of the account. Sections 72-6-221 through 72-6-227 govern the liability and setoff rights of financial institutions that make payments pursuant to it.

History: **En. Sec. 89, Ch. 494, L. 1993; amd. Sec. 150, Ch. 264, L. 2013.**

72-6-207 through 72-6-210 reserved.

72-6-211. Ownership during lifetime. (1) In this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party that have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(2) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(3) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(4) An agent in an account with an agency designation has no beneficial right to sums on deposit.

History: **En. Sec. 90, Ch. 494, L. 1993.**

72-6-212. Rights at death. (1) Except as otherwise provided in this part, on the death of a party, sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 belongs to the surviving parties in equal shares and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under 72-6-211 and the right of survivorship continues between the surviving parties.

(2) In an account with a POD designation:

(a) on the death of one of two or more parties, the rights in sums on deposit are governed by subsection (1);

(b) on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares and there is no right of survivorship in the event of the death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last-surviving party.

(3) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by the death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(4) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

History: En. Sec. 91, Ch. 494, L. 1993.

72-6-213. Alteration of rights. (1) Rights at death under 72-6-212 are determined by the terms of the account at the death of a party.

(2) Except as provided in subsection (3) and unless otherwise agreed in writing between the parties to the account, the terms of an account may be altered by written notice given by a party to the financial institution to change the terms of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(3) A financial institution may, in its discretion, refuse to honor a request for alteration of rights that would change:

(a) the financial institution's obligations or rights under the contract of deposit; or

(b) the parties to a multiple-party account if the request is not signed by all of the parties to the account.

(4) A right of survivorship arising from the express terms of the account, from 72-6-212, or from a POD designation may not be altered by will.

History: En. Sec. 92, Ch. 494, L. 1993; amd. Sec. 30, Ch. 592, L. 1995; amd. Sec. 4, Ch. 279, L. 1997.

72-6-214. Accounts and transfers nontestamentary. Except as provided in Title 72, chapter 2, part 2, or as a consequence of and to the extent directed by 72-6-228, a transfer resulting from the application of 72-6-212 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to Title 72, chapters 1 through 5.

History: En. Sec. 93, Ch. 494, L. 1993; amd. Sec. 151, Ch. 264, L. 2013.

72-6-215. Repealed. Sec. 162, Ch. 264, L. 2013.

History: En. Sec. 94, Ch. 494, L. 1993.

72-6-216. Community property and tenancy by entireties. (1) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other that arises from the express terms of the account or 72-6-212 may not be altered by will.

(2) This part does not affect the law governing tenancy by the entireties.

History: En. Sec. 95, Ch. 494, L. 1993.

72-6-217 through 72-6-220 reserved.

72-6-221. Authority of financial institution. A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

History: En. Sec. 96, Ch. 494, L. 1993.

Cross-References
Financial Institutions, Title 32.

72-6-222. Payment on multiple-party account. A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative or a successor claiming under 72-3-1101 if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary, unless the account is without right of survivorship under 72-6-212.

History: En. Sec. 97, Ch. 494, L. 1993.

72-6-223. Payment on POD designation. A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution, showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary.

History: En. Sec. 98, Ch. 494, L. 1993.

72-6-224. Payment to designated agent. A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received and whether or not the authority of the agent terminates on the disability or incapacity of a party.

History: En. Sec. 99, Ch. 494, L. 1993.

Cross-References
Agency, Title 28, ch. 10.

72-6-225. Payment to minor. If a financial institution is required or permitted to make payment pursuant to this part to a minor designated as a beneficiary, payment may be made pursuant to the Montana Uniform Transfers to Minors Act, Title 72, chapter 26.

History: En. Sec. 100, Ch. 494, L. 1993.

72-6-226. Discharge. (1) Payment made pursuant to this part in accordance with the terms of an account, or honoring a request for alteration of rights made in accordance with 72-6-213, discharges the financial institution from all claims for amounts so paid or alterations so made, whether or not the payment or alteration is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment or alteration may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment or alteration is requested, received, or made.

(2) Protection under this section does not extend to payments or alterations made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account or alteration of rights, including payments or alterations relating to an account having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made or the alteration is requested. Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment or alteration if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without

liability, to make payments in accordance with the terms of the account or to honor a request for alterations.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts or regarding whether a request for an alteration of rights to an account was improper between the parties.

History: **En. Sec. 101, Ch. 494, L. 1993; amd. Sec. 31, Ch. 592, L. 1995; amd. Sec. 5, Ch. 279, L. 1997.**

72-6-227. Setoff. Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is either the proportion to which the party is, or immediately before death was, beneficially entitled under 72-6-211 or, in the absence of proof of that proportion, an equal share with all parties.

History: **En. Sec. 102, Ch. 494, L. 1993.**

72-6-228. Liability of nonprobate transferees for creditor claims and statutory allowances. (1) As used in this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following order of priority:

(a) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(c) other nonprobate transferees in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devises under it.

(5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section must be commenced within 1 year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following provisions apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

History: **En. Sec. 141, Ch. 264, L. 2013.**

Part 3
Uniform TOD Security Registration Act

Part Cross-References

Securities, Title 30, ch. 10.

72-6-301. Definitions. As used in this part, the following definitions apply:

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death;

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death; or

(c) an investment management or custody account with a trust company or trust division of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death.

History: **En. Sec. 103, Ch. 494, L. 1993; amd. Sec. 1, Ch. 76, L. 2005.**

72-6-302. Registration in beneficiary form — sole or joint tenancy ownership. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form and not as tenants in common.

History: **En. Sec. 104, Ch. 494, L. 1993.**

Cross-References

Joint interest defined, 70-1-307.

72-6-303. Registration in beneficiary form — applicable law. (1) A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state:

(a) of organization of the issuer or registering entity;

(b) of the location of the registering entity's principal office;

(c) of the office of its transfer agent or its office making the registration; or

(d) listed as the owner's address at the time of registration.

(2) A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

History: En. Sec. 105, Ch. 494, L. 1993.

72-6-304. Origination of registration in beneficiary form. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

History: En. Sec. 106, Ch. 494, L. 1993.

72-6-305. Form of registration in beneficiary form. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

History: En. Sec. 107, Ch. 494, L. 1993.

72-6-306. Effect of registration in beneficiary form. The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

History: En. Sec. 108, Ch. 494, L. 1993.

72-6-307. Ownership on death of owner. On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of the death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

History: En. Sec. 109, Ch. 494, L. 1993.

72-6-308. Protection of registering entity. (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in this part.

(3) (a) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with 72-6-307 and does so in good faith reliance on:

(i) the registration;

(ii) this part; and

(iii) information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(b) The protections of this part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this part.

(4) The protection provided by this part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

History: En. Sec. 110, Ch. 494, L. 1993.

72-6-309. Nontestamentary transfer on death. (1) A transfer on death, resulting from a registration in beneficiary form, is effective by reason of the contract regarding the registration between the owner and the registering entity and this part and is not testamentary.

(2) This part does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

History: En. Sec. 111, Ch. 494, L. 1993.

72-6-310. Terms, conditions, and forms for registration. (1) (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for:

(i) registrations in beneficiary form; and

(ii) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

(b) The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death that governs inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

(b) multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.;

(c) multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.

History: En. Sec. 112, Ch. 494, L. 1993.

72-6-311. Application of part. This part applies to registrations of securities in beneficiary form made before or after October 1, 1993, by decedents dying on or after October 1, 1993.

History: En. Sec. 131, Ch. 494, L. 1993.

Part 4

Uniform Real Property Transfer on Death Act

72-6-401. Short title. This part may be cited as the "Uniform Real Property Transfer on Death Act".

History: En. Sec. 83, Ch. 313, L. 2019.

72-6-402. Definitions. As used in this part, the following definitions apply:

(1) "Beneficiary" means a person that receives property under a transfer on death deed.

(2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

(3) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(6) "Transfer on death deed" means a deed authorized under this part.

(7) "Transferor" means an individual who makes a transfer on death deed.

History: **En. Sec. 84, Ch. 313, L. 2019.**

72-6-403. Nonexclusivity. This part does not affect any method of transferring property otherwise permitted under the law of this state.

History: **En. Sec. 86, Ch. 313, L. 2019.**

72-6-404. Transfer on death deed authorized. An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

History: **En. Sec. 87, Ch. 313, L. 2019.**

72-6-405. Transfer on death deed revocable. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

History: **En. Sec. 88, Ch. 313, L. 2019.**

72-6-406. Transfer on death deed nontestamentary. A transfer on death deed is nontestamentary.

History: **En. Sec. 89, Ch. 313, L. 2019.**

72-6-407. Capacity of transferor. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

History: **En. Sec. 90, Ch. 313, L. 2019.**

72-6-408. Requirements. A transfer on death deed:

(1) except as otherwise provided in subsection (2), must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(3) must be recorded before the transferor's death in the public records in the office of the county clerk and recorder of the county where the property is located.

History: **En. Sec. 91, Ch. 313, L. 2019.**

72-6-409. Notice, delivery, acceptance, consideration not required. A transfer on death deed is effective without:

(1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) consideration.

History: **En. Sec. 92, Ch. 313, L. 2019.**

72-6-410. Revocation by instrument authorized — revocation by act not permitted. (1) Subject to subsection (2), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(a) is one of the following:

(i) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(ii) an instrument of revocation that expressly revokes the deed or part of the deed;

(iii) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(b) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the county clerk and recorder of the county where the deed is recorded.

(2) If a transfer on death deed is made by more than one transferor:

(a) revocation by a transferor does not affect the deed as to the interest of another transferor; and

(b) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(4) This section does not limit the effect of an inter vivos transfer of the property, which revokes any prior transfer on death deed to the property.

History: **En. Sec. 93, Ch. 313, L. 2019.**

72-6-411. Effect of transfer on death deed during transferor's life. During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) create a legal or equitable interest in favor of the designated beneficiary; or

(6) subject the property to claims or process of a creditor of the designated beneficiary.

History: En. Sec. 94, Ch. 313, L. 2019.

72-6-412. Effect of transfer on death deed at transferor's death. (1) Except as otherwise provided in the transfer on death deed, in 72-2-712, 72-2-716, 72-2-813, 72-2-814, 72-6-112, or in this section, and subject to chapter 2, part 2, of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(a) Subject to subsection (1)(b), the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(c) Subject to subsection (1)(d), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(2) Subject to Title 70, chapter 21, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For the purposes of this subsection and Title 70, chapter 21, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(3) If a transferor is a joint owner and is:

(a) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(b) the last surviving joint owner, the transfer on death deed is effective.

(4) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

(5) (a) On transfer of interest in the property after the death of the owner pursuant to a transfer on death deed in this section, any real property insurance coverage, including all rights and obligations, on the real property transferred must be extended to cover losses to the real property as if the designated beneficiary identified on the transfer on death deed was the named insured, unless the beneficiary has disclaimed interest in the real property. The beneficiary's temporary coverage terminates the earlier of:

(i) 45 days after the date of the owner's death;

(ii) the expiration date of the policy; or

(iii) on placement of the beneficiaries' replacement policy.

(b) Nothing in this subsection (5) affects any coverage provided under the policy to household members or others who are considered to be insureds on the death of the owner.

History: En. Sec. 95, Ch. 313, L. 2019; amd. Sec. 1, Ch. 143, L. 2021; amd. Sec. 2, Ch. 296, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 296, L. 2025. Amendment effective May 1, 2025.

72-6-413. Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as provided by 72-2-817 through 72-2-833, the Uniform Disclaimer of Property Interests Act.

History: En. Sec. 96, Ch. 313, L. 2019.

72-6-414. Liability for creditor claims and statutory allowances. A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in 72-6-112.

History: En. Sec. 97, Ch. 313, L. 2019.

72-6-415. Optional form of transfer on death deed. The following form may be used to create a transfer on death deed. The other sections of this part govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer Before Using This Form.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

____________________ ____________________

Printed name Mailing address

____________________ ____________________

Printed name Mailing address

Legal description of the property:

____

____

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

____________________ ____________________

Printed name Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

____________________ ____________________

Printed name Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

____________________ ____________________

Signature Date

____________________ ____________________

Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.

How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk and recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the office of the county clerk and recorder of the county where the property is located. Follow the instructions given by the county clerk and recorder to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed:

(1) Complete and acknowledge a revocation form, and record it in each county where the property is located.

(2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each county where the property is located.

(3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

History: **En. Sec. 98, Ch. 313, L. 2019; amd. Sec. 2, Ch. 143, L. 2021.**

72-6-416. Optional form of revocation. The following form may be used to create an instrument of revocation under this part. The other sections of this part govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

______________________ ______________________
Printed name Mailing address

______________________ ______________________
Printed name Mailing address

Legal description of the property:

____

____

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

Signature ____________________ Date ____________

Signature ____________________ Date ____________

ACKNOWLEDGMENT
(insert acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the office of the county clerk and recorder of each county where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be available in the office of the county clerk and recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the office of the county clerk and recorder of deeds of the county where the property is located. Follow the instructions given by the county clerk and recorder to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

History: **En. Sec. 99, Ch. 313, L. 2019; amd. Sec. 3, Ch. 143, L. 2021.**

72-6-417. Prior executed and recorded beneficiary deed. Any beneficiary deed that was executed and recorded prior to October 1, 2019, and which complied with the law in effect when it was recorded, shall be deemed to be a transfer on death deed for the purposes of this part.

History: **En. Sec. 100, Ch. 313, L. 2019.**

72-6-418. Severability. If any provision of this code or the application of this code to any person or circumstances is held invalid, the invalidity may not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

History: **En. Sec. 2, Ch. 313, L. 2019.**

CHAPTER 7
UNIFORM POWERS OF APPOINTMENT ACT

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Part 1
General Provisions

72-7-101. Short title. This chapter may be cited as the "Uniform Powers of Appointment Act".

History: En. Sec. 1, Ch. 293, L. 2015.

72-7-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(a) expressly uses the words "any power" in exercising any power of appointment the powerholder has;

(b) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

(c) disposes of all property subject to disposition by the powerholder.

(4) "Donor" means a person who creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person who is not a permissible appointee.

(9) "Instrument" means a writing.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.

(12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(14) "Powerholder" means a person in whom a donor creates a power of appointment.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(a) includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(b) does not include a power exercisable only at the powerholder's death.

(16) "Specific-exercise clause" means a clause in an instrument that specifically refers to and exercises a particular power of appointment.

(17) "Taker in default of appointment" means a person who takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(18) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

History: **En. Sec. 2, Ch. 293, L. 2015.**

72-7-103. Governing law. Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) the creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the relevant time; and

(2) the exercise, release, or disclaimer of the power or the revocation or amendment of the exercise, release, or disclaimer of the power is governed by the law of the powerholder's domicile at the relevant time.

History: **En. Sec. 3, Ch. 293, L. 2015.**

72-7-104. Common law and principles of equity. The common law and principles of equity supplement this act, except to the extent modified by this act or a law of this state other than this act.

History: **En. Sec. 4, Ch. 293, L. 2015.**

Part 2

Creation, Revocation, and Amendment of Power of Appointment

72-7-201. Creation of power of appointment. (1) A power of appointment is created only if:

(a) the instrument creating the power:

(i) is valid under applicable law; and

(ii) except as otherwise provided in subsection (2), transfers the appointive property; and

(b) the terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(2) Subsection (1)(a)(ii) does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

History: **En. Sec. 5, Ch. 293, L. 2015.**

72-7-202. Nontransferability. A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

History: **En. Sec. 6, Ch. 293, L. 2015.**

72-7-203. Presumption of unlimited authority. Subject to 72-7-204 and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) presently exercisable;

(2) exclusionary; and

(3) except as otherwise provided in 72-7-204, general.

History: **En. Sec. 7, Ch. 293, L. 2015.**

72-7-204. Exception to presumption of unlimited authority. Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(1) the power is exercisable only at the powerholder's death; and

(2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

History: **En. Sec. 8, Ch. 293, L. 2015.**

72-7-205. Rules of classification. (1) In this section, "adverse party" means a person with a substantial beneficial interest in property that would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

History: **En. Sec. 9, Ch. 293, L. 2015.**

72-7-206. Power to revoke or amend. A donor may revoke or amend a power of appointment only to the extent that:

(1) the instrument creating the power is revocable by the donor; or

(2) the donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

History: **En. Sec. 10, Ch. 293, L. 2015.**

Part 3
Exercise of Power of Appointment

72-7-301. Requisites for exercise of power of appointment. (1) A power of appointment is exercised only:

(a) if the instrument exercising the power is valid under applicable law;

(b) if the terms of the instrument exercising the power:

(i) manifest the powerholder's intent to exercise the power; and

(ii) subject to 72-7-304, satisfy the requirements of exercise, if any, imposed by the donor; and

(c) to the extent the appointment is a permissible exercise of the power.

(2) Notwithstanding any other provision of this act, the property subject to a power of appointment may not pass to and may not be administered as a part of the powerholder's probate estate unless:

(a) the power of appointment is a general one that expressly authorizes the powerholder to appoint the appointive property to his or her own estate; and

(b) the powerholder utilizes clear and unequivocal language demonstrating a specific intent to exercise the power in favor of his or her own estate.

History: **En. Sec. 11, Ch. 293, L. 2015.**

72-7-302. Intent to exercise — determining intent from residuary clause. (1) In this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will or a comparable clause in the powerholder's revocable trust manifests the powerholder's intent to exercise a power of appointment only if:

(a) the terms of the instrument containing the residuary clause do not manifest a contrary intent;

(b) the power is a general power exercisable in favor of the powerholder's estate;

(c) there is no gift-in-default clause or the clause is ineffective; and

(d) the powerholder did not release the power.

History: En. Sec. 12, Ch. 293, L. 2015.

72-7-303. Intent to exercise — after-acquired power. Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(1) except as otherwise provided in subsection (2), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(2) if the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

History: En. Sec. 13, Ch. 293, L. 2015.

72-7-304. Substantial compliance with donor-imposed formal requirement. A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) the powerholder knows of and intends to exercise the power; and

(2) the powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

History: En. Sec. 14, Ch. 293, L. 2015.

72-7-305. Permissible appointment. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) create a general power in a permissible appointee;

(c) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or

(d) create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

History: En. Sec. 15, Ch. 293, L. 2015; amd. Sec. 1, Ch. 200, L. 2019.

72-7-306. Appointment to deceased appointee or permissible appointee's descendant. (1) Subject to the antilapse provisions of 72-2-613, an appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of or create a new power of appointment in a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

History: En. Sec. 16, Ch. 293, L. 2015.

72-7-307. Impermissible appointment. (1) Except as otherwise provided in 72-7-306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

History: En. Sec. 17, Ch. 293, L. 2015.

72-7-308. Selective allocation doctrine. If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

History: En. Sec. 18, Ch. 293, L. 2015.

72-7-309. Capture doctrine — disposition of ineffectively appointed property under general power. To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift-in-default clause controls the disposition of the ineffectively appointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(a) passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) if there is no taker under subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

History: En. Sec. 19, Ch. 293, L. 2015.

72-7-310. Disposition of unappointed property under released or unexercised general power. To the extent a powerholder releases or fails to exercise a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective:

(a) except as otherwise provided in subsection (2)(b), the unappointed property passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) to the extent the powerholder released the power or if there is no taker under subsection (2)(a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

History: En. Sec. 20, Ch. 293, L. 2015.

72-7-311. Disposition of unappointed property under released or unexercised nongeneral power. To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(a) passes to the permissible appointees if:

(i) the permissible appointees are defined and limited; and

(ii) the terms of the instrument creating the power do not manifest a contrary intent; or

(b) if there is no taker under subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

History: En. Sec. 21, Ch. 293, L. 2015.

72-7-312. Disposition of unappointed property if partial appointment to taker in default. Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

History: En. Sec. 22, Ch. 293, L. 2015.

72-7-313. Appointment to taker in default. If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the default clause.

History: En. Sec. 23, Ch. 293, L. 2015.

72-7-314. Powerholder's authority to revoke or amend exercise. A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(1) the powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

(2) the terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

History: En. Sec. 24, Ch. 293, L. 2015.

Part 4
Disclaimer on Release — Contract to Appoint or Not to Appoint

72-7-401. Disclaimer. As provided by 72-2-825 and 72-2-826:

(1) a powerholder may disclaim all or part of a power of appointment; and

(2) a permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

History: En. Sec. 25, Ch. 293, L. 2015; amd. Sec. 101, Ch. 313, L. 2019.

72-7-402. Authority to release. A powerholder may release a power of appointment in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

History: En. Sec. 26, Ch. 293, L. 2015.

72-7-403. Method of release. A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a writing manifesting the powerholder's intent by clear and convincing evidence.

History: En. Sec. 27, Ch. 293, L. 2015.

72-7-404. Revocation or amendment of release. A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

History: En. Sec. 28, Ch. 293, L. 2015.

72-7-405. Power to contract — presently exercisable power of appointment. A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or

(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

History: En. Sec. 29, Ch. 293, L. 2015.

72-7-406. Power to contract — power of appointment not presently exercisable. A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(1) is also the donor of the power; and

(2) has reserved the power in a revocable trust.

History: En. Sec. 30, Ch. 293, L. 2015.

72-7-407. Remedy for breach of contract to appoint or not to appoint. The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

History: **En. Sec. 31, Ch. 293, L. 2015.**

Part 5

Rights of Powerholder's Creditors in Appointive Property

72-7-501. Creditor claim — general power created by powerholder. (1) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(2) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in the Uniform Fraudulent Transfer Act, 31-2-326 through 31-2-342, and in 70-20-401, 70-20-402, and 70-20-405.

(3) Subject to subsection (2), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(4) Subject to subsections (2) and (3) and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(a) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

History: **En. Sec. 32, Ch. 293, L. 2015.**

72-7-502. Creditor claim — general power not created by powerholder. (1) Property subject to a general or nongeneral power of appointment created by a person other than the powerholder, including a presently exercisable general or nongeneral power of appointment, is exempt from a claim by a creditor of the powerholder or the powerholder's estate. The powerholder of such a power may not be compelled to exercise the power, and the powerholder's creditors may not acquire the power or any rights to the power or reach the trust property or beneficial interests by any other means. A court may not exercise or require the powerholder to exercise the power of appointment.

(2) Subject to 72-7-504(3), a power of appointment created by a person other than the powerholder that is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. Section 2041(b)(1)(A) or 26 U.S.C. Section 2514(c)(1), on October 1, 2015, is treated for purposes of this act as a nongeneral power.

History: **En. Sec. 33, Ch. 293, L. 2015; amd. Sec. 2, Ch. 200, L. 2019.**

72-7-503. Power to withdraw. (1) For purposes of this section and except as otherwise provided in subsection (2), a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. Section 2041(b)(2) and 26 U.S.C. Section 2514(e) or the amount specified in 26 U.S.C. Section 2503(b) on October 1, 2015.

History: **En. Sec. 34, Ch. 293, L. 2015.**

72-7-504. Creditor claim — nongeneral power. (1) Except as otherwise provided in subsections (2) and (3), appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(2) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of the Uniform Fraudulent Transfer Act, 31-2-326 through 31-2-342.

(3) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of this act as a general power.

History: En. Sec. 35, Ch. 293, L. 2015.

Part 6
Miscellaneous Provisions

72-7-601. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: En. Sec. 36, Ch. 293, L. 2015.

72-7-602. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: En. Sec. 37, Ch. 293, L. 2015.

72-7-603. Application to existing relationships. (1) Except as otherwise provided in this act, on and after October 1, 2015:

(a) this act applies to a power of appointment created before, on, or after October 1, 2015;

(b) this act applies to a judicial proceeding concerning a power of appointment commenced on or after October 1, 2015;

(c) this act applies to a judicial proceeding concerning a power of appointment commenced before October 1, 2015, unless the court finds that application of a particular provision of this act would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this act does not apply and the superseded law applies;

(d) a rule of construction or presumption provided in this act applies to an instrument executed before October 1, 2015, unless there is a clear indication of a contrary intent in the terms of the instrument; and

(e) except as otherwise provided in subsections (1)(a) through (1)(d), an action done before October 1, 2015, is not affected by this act.

(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this act before October 1, 2015, the law continues to apply to the right.

History: En. Sec. 38, Ch. 293, L. 2015.

CHAPTER 8
RESERVED

CHAPTER 9
DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH

Part 1 — Uniform Disposition of Community Property Rights at Death

72-9-101. Short title.
72-9-102. Application.
72-9-103. Rebuttable presumptions.
72-9-104 through 72-9-106 reserved.

72-9-107. Disposition upon death.
72-9-108. Perfection of title of surviving spouse.
72-9-109. Perfection of title of personal representative, heir, or devisee.
72-9-110. Purchaser for value or lender.
72-9-111 through 72-9-113 reserved.
72-9-114. Creditor's rights.
72-9-115. Acts of married persons.
72-9-116. Limitations on testamentary disposition.
72-9-117 through 72-9-119 reserved.
72-9-120. Uniformity of application and construction.

Part 1

Uniform Disposition of Community Property Rights at Death

72-9-101. Short title. This part shall be known and may be cited as the "Uniform Disposition of Community Property Rights at Death Act".

History: En. Sec. 1, Ch. 395, L. 1989; Sec. 72-6-101, MCA 1991; redes. 72-9-101 by Code Commissioner, 1993.

72-9-102. Application. This part applies to the disposition at death of the following property acquired by a married person:

(1) (a) all personal property, wherever situated, that was acquired as or became and remained community property under the laws of another jurisdiction; and

(b) all or the proportionate part of that property acquired with the rents, issues, or income of, the proceeds from, or in exchange for that community property; or

(c) property traceable to that community property; or

(2) all or the proportionate part of any real property situated in this state that was acquired with the rents, issues, or income of, the proceeds from, or in exchange for property acquired as or which became and remained community property under the laws of another jurisdiction, or property traceable to that community property.

History: En. Sec. 2, Ch. 395, L. 1989; Sec. 72-6-102, MCA 1991; redes. 72-9-102 by Code Commissioner, 1993.

Cross-References

Exempt property and allowances, Title 72, ch. 2, part 4.
Inheritance and estate taxes, Title 72, ch. 16.

72-9-103. Rebuttable presumptions. In determining whether this part applies to specific property, the following rebuttable presumptions apply:

(1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become and remained property to which this part applies; and

(2) real property situated in this state and personal property, wherever situated, acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this part applies.

History: En. Sec. 3, Ch. 395, L. 1989; Sec. 72-6-103, MCA 1991; redes. 72-9-103 by Code Commissioner, 1993.

Cross-References

Disputable presumptions, 26-1-602.

72-9-104 through 72-9-106 reserved.

72-9-107. Disposition upon death. Upon death of a married person, one-half of the property to which this part applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the Uniform Probate Code. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the Uniform Probate Code. With respect to property to which this part applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will.

History: En. Sec. 4, Ch. 395, L. 1989; Sec. 72-6-107, MCA 1991; redes. 72-9-107 by Code Commissioner, 1993.

Cross-References

General probate and administration, Title 72, ch. 3, part 1.

Special provisions relating to distribution, Title 72, ch. 3, part 9.

72-9-108. Perfection of title of surviving spouse. If the title to any property to which this part applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the district court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the district court. Neither the personal representative nor the district court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this part applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

History: En. Sec. 5, Ch. 395, L. 1989; Sec. 72-6-108, MCA 1991; redes. 72-9-108 by Code Commissioner, 1993.

72-9-109. Perfection of title of personal representative, heir, or devisee. If the title to any property to which this part applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this part applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

History: En. Sec. 6, Ch. 395, L. 1989; Sec. 72-6-109, MCA 1991; redes. 72-9-109 by Code Commissioner, 1993.

Cross-References

Powers and duties of personal representative, Title 72, ch. 3, part 6.

Foreign personal representatives, Title 72, ch. 4.

72-9-110. Purchaser for value or lender. (1) If a surviving spouse has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes the purchaser's or lender's interest in the property free of any rights of the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes the purchaser's or lender's interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest must be treated in the same manner as the property transferred to the purchaser for value or a lender.

History: En. Sec. 7, Ch. 395, L. 1989; Sec. 72-6-110, MCA 1991; redes. 72-9-110 by Code Commissioner, 1993; amd. Sec. 2441, Ch. 56, L. 2009.

72-9-111 through 72-9-113 reserved.

72-9-114. Creditor's rights. This part does not affect rights of creditors with respect to property to which this part applies.

History: En. Sec. 8, Ch. 395, L. 1989; Sec. 72-6-114, MCA 1991; redes. 72-9-114 by Code Commissioner, 1993.

Cross-References

Creditors' claims, Title 72, ch. 3, part 8.

72-9-115. Acts of married persons. This part does not prevent married persons from severing or altering their interests in property to which this part applies.

History: En. Sec. 9, Ch. 395, L. 1989; Sec. 72-6-115, MCA 1991; redes. 72-9-115 by Code Commissioner, 1993.

Cross-References

Husband and wife — joint interests, obligations and powers, Title 40 ch. 2, part 1.

Elective share of surviving spouse, Title 72, ch. 2, part 2.

72-9-116. Limitations on testamentary disposition. This part does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

History: En. Sec. 10, Ch. 395, L. 1989; Sec. 72-6-116, MCA 1991; redes. 72-9-116 by Code Commissioner, 1993.

72-9-117 through 72-9-119 reserved.

72-9-120. Uniformity of application and construction. Any person applying and interpreting this part shall do so as to make uniform the law with respect to the subject of this part among those states that enact it.

History: En. Sec. 11, Ch. 395, L. 1989; Sec. 72-6-120, MCA 1991; redes. 72-9-120 by Code Commissioner, 1993.

CHAPTER 10
SUPPLEMENTARY GENERAL PROVISIONS ON PROBATE AND SUCCESSION
(Repealed)

Part 1 — Jurisdiction and Courts (Repealed)
Part 2 — Notice Generally (Repealed)

Part 1
Jurisdiction and Courts (Repealed)

72-10-101. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 314, p. 322, L. 1877; re-en. Sec. 314, 2nd Div. Rev. Stat. 1879; re-en. Sec. 314, 2nd Div. Comp. Stat. 1887; amd. Sec. 2910, C. Civ. Proc. 1895; re-en. Sec. 7701, Rev. C. 1907; re-en. Sec. 10355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1704; re-en. Sec. 10355, R.C.M. 1935; R.C.M. 1947, 91-4301(part); amd. Sec. 8, Ch. 6, L. 1979.

72-10-102. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 314, p. 322, L. 1877; re-en. Sec. 314, 2nd Div. Rev. Stat. 1879; re-en. Sec. 314, 2nd Div. Comp. Stat. 1887; amd. Sec. 2910, C. Civ. Proc. 1895; re-en. Sec. 7701, Rev. C. 1907; re-en. Sec. 10355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1704; re-en. Sec. 10355, R.C.M. 1935; R.C.M. 1947, 91-4301(part).

72-10-103. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 330, p. 325, L. 1877; re-en. Sec. 330, 2nd Div. Rev. Stat. 1879; re-en. Sec. 330, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2926, C. Civ. Proc. 1895; re-en. Sec. 7717, Rev. C. 1907; re-en. Sec. 10371, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1719; re-en. Sec. 10371, R.C.M. 1935; R.C.M. 1947, 91-4317.

72-10-104. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 332, p. 326, L. 1877; re-en. Sec. 332, 2nd Div. Rev. Stat. 1879; re-en. Sec. 332, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2929, C. Civ. Proc. 1895; re-en. Sec. 7720, Rev. C. 1907; re-en. Sec. 10374, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1722; re-en. Sec. 10374, R.C.M. 1935; R.C.M. 1947, 91-4320; amd. Sec. 9, Ch. 6, L. 1979.

72-10-105. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 109, p. 264, L. 1877; re-en. Sec. 109, 2nd Div. Rev. Stat. 1879; re-en. Sec. 109, 2nd Div. Comp. Stat. 1887; amd. Sec. 2530, C. Civ. Proc. 1895; en. Sec. 1, p. 244, L. 1897; re-en. Sec. 7484, Rev. C. 1907; re-en. Sec. 10120, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1430; re-en. Sec. 10120, R.C.M. 1935; R.C.M. 1947, 91-2001(part).

72-10-106. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 109, p. 264, L. 1877; re-en. Sec. 109, 2nd Div. Rev. Stat. 1879; re-en. Sec. 109, 2nd Div. Comp. Stat. 1887; amd. Sec. 2530, C. Civ. Proc. 1895; en. Sec. 1, p. 244, L. 1897; re-en. Sec. 7484, Rev. C. 1907; re-en. Sec. 10120, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1430; re-en. Sec. 10120, R.C.M. 1935; R.C.M. 1947, 91-2001(part).

72-10-107. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 317, p. 322, L. 1877; re-en. Sec. 317, 2nd Div. Rev. Stat. 1879; re-en. Sec. 317, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2913, C. Civ. Proc. 1895; re-en. Sec. 7704, Rev. C. 1907; re-en. Sec. 10358, R.C.M. 1921; re-en. Sec. 10358, R.C.M. 1935; R.C.M. 1947, 91-4304; amd. Sec. 10, Ch. 6, L. 1979.

72-10-108. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 318, p. 322, L. 1877; re-en. Sec. 318, 2nd Div. Rev. Stat. 1879; re-en. Sec. 318, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2914, C. Civ. Proc. 1895; re-en. Sec. 7705, Rev. C. 1907; amd. Sec. 1, Ch. 40, L. 1921; re-en. Sec. 10359, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1707; re-en. Sec. 10359, R.C.M. 1935; R.C.M. 1947, 91-4305.

72-10-109. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 319, p. 323, L. 1877; re-en. Sec. 319, 2nd Div. Rev. Stat. 1879; re-en. Sec. 319, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2915, C. Civ. Proc. 1895; re-en. Sec. 7706, Rev. C. 1907; re-en. Sec. 10360, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1708; re-en. Sec. 10360, R.C.M. 1935; R.C.M. 1947, 91-4306; amd. Sec. 11, Ch. 6, L. 1979.

72-10-110. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Secs. 320, 322, p. 323, L. 1877; re-en. Secs. 320, 322, 2nd Div. Rev. Stat. 1879; re-en. Secs. 320, 322, 2nd Div. Comp. Stat. 1887; re-en. Secs. 2916, 2918, C. Civ. Proc. 1895; re-en. Secs. 7707, 7709, Rev. C. 1907; re-en. Secs. 10361, 10363, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1709, 1711; re-en. Secs. 10361, 10363, R.C.M. 1935; R.C.M. 1947, 91-4307, 91-4309; amd. Sec. 12, Ch. 6, L. 1979.

72-10-111. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 331, p. 326, L. 1877; re-en. Sec. 331, 2nd Div. Rev. Stat. 1879; re-en. Sec. 331, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2927, C. Civ. Proc. 1895; re-en. Sec. 7718, Rev. C. 1907; re-en. Sec. 10372, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1720; re-en. Sec. 10372, R.C.M. 1935; R.C.M. 1947, 91-4318; amd. Sec. 13, Ch. 6, L. 1979.

72-10-112. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 332, p. 326, L. 1877; re-en. Sec. 332, 2nd Div. Rev. Stat. 1879; re-en. Sec. 332, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2928, C. Civ. Proc. 1895; re-en. Sec. 7719, Rev. C. 1907; re-en. Sec. 10373, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1721; re-en. Sec. 10372, R.C.M. 1935; R.C.M. 1947, 91-4319.

72-10-113. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 326, p. 324, L. 1877; re-en. Sec. 326, 2nd Div. Rev. Stat. 1879; re-en. Sec. 326, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2922, C. Civ. Proc. 1895; re-en. Sec. 7713, Rev. C. 1907; re-en. Sec. 10367, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1715; re-en. Sec. 10367, R.C.M. 1935; R.C.M. 1947, 91-4313.

Part 2
Notice Generally
(Repealed)

72-10-201. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 321, p. 323, L. 1877; re-en. Sec. 321, 2nd Div. Rev. Stat. 1879; re-en. Sec. 321, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2917, C. Civ. Proc. 1895; re-en. Sec. 7708, Rev. C. 1907; re-en. Sec. 10362, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1710; re-en. Sec. 10362, R.C.M. 1935; R.C.M. 1947, 91-4308.

72-10-202. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 316, p. 322, L. 1877; re-en. Sec. 316, 2nd Div. Rev. Stat. 1879; re-en. Sec. 316, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2912, C. Civ. Proc. 1895; re-en. Sec. 7703, Rev. C. 1907; re-en. Sec. 10357, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1706; re-en. Sec. 10357, R.C.M. 1935; R.C.M. 1947, 91-4303; amd. Sec. 14, Ch. 6, L. 1979.

72-10-203. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 323, p. 324, L. 1877; re-en. Sec. 323, 2nd Div. Rev. Stat. 1879; re-en. Sec. 323, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2919, C. Civ. Proc. 1895; re-en. Sec. 7710, Rev. C. 1907; re-en. Sec. 10364, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1712; re-en. Sec. 10364, R.C.M. 1935; R.C.M. 1947, 91-4310.

72-10-204. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 315, p. 322, L. 1877; re-en. Sec. 315, 2nd Div. Rev. Stat. 1879; re-en. Sec. 315, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2911, C. Civ. Proc. 1895; re-en. Sec. 7702, Rev. C. 1907; re-en. Sec. 10356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1705; re-en. Sec. 10356, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1947; R.C.M. 1947, 91-4302.

CHAPTER 11
INTESTATE SUCCESSION

Part 1 — Intestate Succession

72-11-101. Degrees of kinship — how computed.
72-11-102. Types of kinship — lineal and collateral.
72-11-103. Computation of degrees in lineal kinship.
72-11-104. Computation of degrees in collateral kinship.
72-11-105. Repealed.

Part 2 — Wills — Execution and Revocation (Repealed)

Part 3 — Wills — Construction and Operation (Repealed)

Part 1
Intestate Succession

72-11-101. Degrees of kinship — how computed. The degree of kinship is established by the number of generations, and each generation is called a degree.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1855, Civ. C. 1895; re-en. Sec. 4823, Rev. C. 1907; re-en. Sec. 7076, R.C.M. 1921; Cal. Civ. C. Sec. 1389; re-en. Sec. 7076, R.C.M. 1935; R.C.M. 1947, 91-406; amd. Sec. 76, Ch. 494, L. 1993.

Cross-References

Relationship by affinity, 1-1-219.

72-11-102. Types of kinship — lineal and collateral. There are two types of kinship, lineal and collateral. Lineal kinship, or the direct line of consanguinity, is the relationship between persons, one of whom is a descendant of the other. Collateral kinship is the relationship between people who descend from a common ancestor but are not in a direct line.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1856, Civ. C. 1895; re-en. Sec. 4824, Rev. C. 1907; re-en. Sec. 7077, R.C.M. 1921; Cal. Civ. C. Sec. 1390; re-en. Sec. 7077, R.C.M. 1935; R.C.M. 1947, 91-407; amd. Sec. 77, Ch. 494, L. 1993.

Cross-References

Representation of heirs, 72-2-116.
Kindred of half blood, 72-2-117.
Share of individual related to decedent through two lines, 72-2-123.

72-11-103. Computation of degrees in lineal kinship. The degree of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins. The child is, with regard to the parent, in the first degree; the grandchild is, with regard to the grandparent, in the second degree; and vice versa as to the parent and grandparent with regard to their respective children and grandchildren.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1857, Civ. C. 1895; re-en. Sec. 4825, Rev. C. 1907; re-en. Sec. 7078, R.C.M. 1921; Cal. Civ. C. Sec. 1391; re-en. Sec. 7078, R.C.M. 1935; R.C.M. 1947, 91-408; amd. Sec. 134, Ch. 370, L. 1987; amd. Sec. 78, Ch. 494, L. 1993.

72-11-104. Computation of degrees in collateral kinship. The degree of collateral kinship of two persons is computed by commencing with one of the persons, ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins. Siblings are related to each other in the second degree, uncle and niece are related to each other in the third degree, and first cousins are related to each other in the fourth degree.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1858, Civ. C. 1895; re-en. Sec. 4826, Rev. C. 1907; re-en. Sec. 7079, R.C.M. 1921; Cal. Civ. C. Sec. 1392; re-en. Sec. 7079, R.C.M. 1935; R.C.M. 1947, 91-409; amd. Sec. 79, Ch. 494, L. 1993.

72-11-105. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1859, Civ. C. 1895; re-en. Sec. 4827, Rev. C. 1907; re-en. Sec. 7080, R.C.M. 1921; Cal. Civ. C. Sec. 1393; re-en. Sec. 7080, R.C.M. 1935; re-en. Sec. 7080, R.C.M. 1935; R.C.M. 1947, 91-410.

Part 2
Wills — Execution and Revocation
(Repealed)

72-11-201. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 441, p. 349, L. 1877; re-en. Sec. 441, 2nd Div. Rev. Stat. 1879; re-en. Sec. 441, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1726, Civ. C. 1895; re-en. Sec. 4729, Rev. C. 1907; re-en. Sec. 6983, R.C.M. 1921; Cal. Civ. C. Sec. 1279; Field Civ. C. Sec. 548; re-en. Sec. 6983, R.C.M. 1935; R.C.M. 1947, 91-110.

72-11-202. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 443, p. 350, L. 1877; re-en. Sec. 443, 2nd Div. Rev. Stat. 1879; re-en. Sec. 443, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1728, Civ. C. 1895; re-en. Sec. 4731, Rev. C. 1907; re-en. Sec. 6985, R.C.M. 1921; Cal. Civ. C. Sec. 1281; Field Civ. C. Sec. 549; re-en. Sec. 6985, R.C.M. 1935; R.C.M. 1947, 91-112.

72-11-203. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 5, p. 556, Cod. Stat. 1871; re-en. Sec. 442, p. 350, L. 1877; re-en. Sec. 442, 2nd Div. Rev. Stat. 1879; re-en. Sec. 442, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1727, Civ. C. 1895; re-en. Sec. 4730, Rev. C. 1907; re-en. Sec. 6984, R.C.M. 1921; Cal. Civ. C. Sec. 1280; re-en. Sec. 6984, R.C.M. 1935; R.C.M. 1947, 91-111.

72-11-204. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 464, p. 354, L. 1877; re-en. Sec. 464, 2nd Div. Rev. Stat. 1879; re-en. Sec. 464, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1749, Civ. C. 1895; re-en. Sec. 4752, Rev. C. 1907; re-en. Sec. 7006, R.C.M. 1921; Cal. Civ. C. Sec. 1304; Field Civ. C. Sec. 572; re-en. Sec. 7006, R.C.M. 1935; R.C.M. 1947, 91-133.

72-11-205. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 455, p. 352, L. 1877; re-en. Sec. 455, 2nd Div. Rev. Stat. 1879; re-en. Sec. 455, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1740, Civ. C. 1895; re-en. Sec. 4743, Rev. C. 1907; re-en. Sec. 6997, R.C.M. 1921; Field Civ. C. Sec. 564; re-en. Sec. 6997, R.C.M. 1935; R.C.M. 1947, 91-124.

Part 3
Wills — Construction and Operation
(Repealed)

72-11-301. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 476, p. 356, L. 1877; re-en. Sec. 476, 2nd Div. Rev. Stat. 1879; re-en. Sec. 476, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1772, Civ. C. 1895; re-en. Sec. 4765, Rev. C. 1907; re-en. Sec. 7018, R.C.M. 1921; Cal. Civ. C. Sec. 1319; Field Civ. C. Sec. 581; re-en. Sec. 7018, R.C.M. 1935; R.C.M. 1947, 91-203.

72-11-302. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 481, p. 357, L. 1877; re-en. Sec. 481, 2nd Div. Rev. Stat. 1879; re-en. Sec. 481, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1777, Civ. C. 1895; re-en. Sec. 4770, Rev. C. 1907; re-en. Sec. 7023, R.C.M. 1921; Cal. Civ. C. Sec. 1324; Field Civ. C. Sec. 586; re-en. Sec. 7023, R.C.M. 1935; R.C.M. 1947, 91-208.

72-11-303. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 482, p. 357, L. 1877; re-en. Sec. 482, 2nd Div. Rev. Stat. 1879; re-en. Sec. 482, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1778, Civ. C. 1895; re-en. Sec. 4771, Rev. C. 1907; re-en. Sec. 7024, R.C.M. 1921; Cal. Civ. C. Sec. 1325; Field Civ. C. Sec. 587; re-en. Sec. 7024, R.C.M. 1935; R.C.M. 1947, 91-209.

72-11-304. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13.

72-11-305. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 480, p. 356, L. 1877; re-en. Sec. 480, 2nd Div. Rev. Stat. 1879; re-en. Sec. 480, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1776, Civ. C. 1895; re-en. Sec. 4769, Rev. C. 1907; re-en. Sec. 7022, R.C.M. 1921; Cal. Civ. C. Sec. 1323; Field Civ. C. Sec. 585; re-en. Sec. 7022, R.C.M. 1935; R.C.M. 1947, 91-207.

72-11-306. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 477, p. 356, L. 1877; re-en. Sec. 477, 2nd Div. Rev. Stat. 1879; re-en. Sec. 477, 2nd Div. comp. Stat. 1887; re-en. Sec. 1773, Civ. C. 1895; re-en. Sec. 4766, Rev. C. 1907; re-en. Sec. 7019, R.C.M. 1921; Cal. Civ. C. Sec. 1320; Field Civ. C. Sec. 582; re-en. Sec. 7019, R.C.M. 1935; R.C.M. 1947, 91-204.

72-11-307. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 478, p. 356, L. 1877; re-en. Sec. 478, 2nd Div. Rev. Stat. 1879; re-en. Sec. 478, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1774, Civ. C. 1895; re-en. Sec. 4767, Rev. C. 1907; re-en. Sec. 7020, R.C.M. 1921; Cal. Civ. C. Sec. 1321; Field Civ. C. Sec. 583; re-en. Sec. 7020, R.C.M. 1935; R.C.M. 1947, 91-205.

72-11-308. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 479, p. 356, L. 1877; re-en. Sec. 479, 2nd Div. Rev. Stat. 1879; re-en. Sec. 479, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1775, Civ. C. 1895; re-en. Sec. 4768, Rev. C. 1907; re-en. Sec. 7021, R.C.M. 1921; Cal. Civ. C. Sec. 1322; Field Civ. C. Sec. 584; re-en. Sec. 7021, R.C.M. 1935; R.C.M. 1947, 91-206.

72-11-309. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 484, p. 357, L. 1877; re-en. Sec. 484, 2nd Div. Rev. Stat. 1879; re-en. Sec. 484, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1780, Civ. C. 1895; re-en. Sec. 4773, Rev. C. 1907; re-en. Sec. 7026, R.C.M. 1921; Cal. Civ. C. Sec. 1327; Field Civ. C. Sec. 589; re-en. Sec. 7026, R.C.M. 1935; R.C.M. 1947, 91-211.

72-11-310. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 485, p. 357, L. 1877; re-en. Sec. 485, 2nd Div. Rev. Stat. 1879; re-en. Sec. 485, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1781, Civ. C. 1895; re-en. Sec. 4774, Rev. C. 1907; re-en. Sec. 7027, R.C.M. 1921; Cal. Civ. C. Sec. 1328; Field Civ. C. Sec. 590; re-en. Sec. 7027, R.C.M. 1935; R.C.M. 1947, 91-212.

72-11-311. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 486, p. 357, L. 1877; re-en. Sec. 486, 2nd Div. Rev. Stat. 1879; re-en. Sec. 486, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1782, Civ. C. 1895; re-en. Sec. 4775, Rev. C. 1907; re-en. Sec. 7028, R.C.M. 1921; Cal. Civ. C. Sec. 1329; Field Civ. C. Sec. 591; re-en. Sec. 7028, R.C.M. 1935; R.C.M. 1947, 91-213.

72-11-312. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 493, p. 358, L. 1877; re-en. Sec. 493, 2nd Div. Rev. Stat. 1879; re-en. Sec. 493, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1789, Civ. C. 1895; re-en. Sec. 4782, Rev. C. 1907; re-en. Sec. 7035, R.C.M. 1921; Cal. Civ. C. Sec. 1336; Field Civ. C. Sec. 598; re-en. Sec. 7035, R.C.M. 1935; R.C.M. 1947, 91-220.

72-11-313. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 497, p. 359, L. 1877; re-en. Sec. 497, 2nd Div. Rev. Stat. 1879; re-en. Sec. 497, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1793, Civ. C. 1895; re-en. Sec. 4786, Rev. C. 1907; re-en. Sec. 7039, R.C.M. 1921; Cal. Civ. C. Sec. 1340; Based on Field Civ. C. Sec. 602; re-en. Sec. 7039, R.C.M. 1935; R.C.M. 1947, 91-224.

72-11-314. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 502, p. 360, L. 1877; re-en. Sec. 502, 2nd Div. Rev. Stat. 1879; re-en. Sec. 502, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1798, Civ. C. 1895; re-en. Sec. 4791, Rev. C. 1907; re-en. Sec. 7044, R.C.M. 1921; Cal. Civ. C. Sec. 1345; Field Civ. C. Sec. 607; re-en. Sec. 7044, R.C.M. 1935; R.C.M. 1947, 91-229.

72-11-315. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 503, p. 360, L. 1877; re-en. Sec. 503, 2nd Div. Rev. Stat. 1879; re-en. Sec. 503, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1799, Civ. C. 1895; re-en. Sec. 4792, Rev. C. 1907; re-en. Sec. 7045, R.C.M. 1921; Cal. Civ. C. Sec. 1346; Field Civ. C. Sec. 608; re-en. Sec. 7045, R.C.M. 1935; R.C.M. 1947, 91-230.

72-11-316. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 504, p. 360, L. 1877; re-en. Sec. 504, 2nd Div. Rev. Stat. 1879; re-en. Sec. 504, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1800, Civ. C. 1895; re-en. Sec. 4793, Rev. C. 1907; re-en. Sec. 7046, R.C.M. 1921; Cal. Civ. C. Sec. 1347; Field Civ. C. Sec. 609; re-en. Sec. 7046, R.C.M. 1935; R.C.M. 1947, 91-231.

72-11-317. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 505, p. 360, L. 1877; re-en. Sec. 505, 2nd Div. Rev. Stat. 1879; re-en. Sec. 505, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1801, Civ. C. 1895; re-en. Sec. 4794, Rev. C. 1907; re-en. Sec. 7047, R.C.M. 1921; Cal. Civ. C. Sec. 1348; Field Civ. C. Sec. 610; re-en. Sec. 7047, R.C.M. 1935; R.C.M. 1947, 91-232.

72-11-318. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 506, p. 360, L. 1877; re-en. Sec. 506, 2nd Div. Rev. Stat. 1879; re-en. Sec. 506, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1802, Civ. C. 1895; re-en. Sec. 4795, Rev. C. 1907; re-en. Sec. 7048, R.C.M. 1921; Cal. Civ. C. Sec. 1349; Field Civ. C. Sec. 611; re-en. Sec. 7048, R.C.M. 1935; R.C.M. 1947, 91-233.

72-11-319. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 507, p. 360, L. 1877; re-en. Sec. 507, 2nd Div. Rev. Stat. 1879; re-en. Sec. 507, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1803, Civ. C. 1895; re-en. Sec. 4796, Rev. C. 1907; re-en. Sec. 7049, R.C.M. 1921; Cal. Civ. C. Sec. 1350; Field Civ. C. Sec. 612; re-en. Sec. 7049, R.C.M. 1935; R.C.M. 1947, 91-234.

72-11-320. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 494, p. 358, L. 1877; re-en. Sec. 494, 2nd Div. Rev. Stat. 1879; re-en. Sec. 494, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1790, Civ. C. 1895; re-en. Sec. 4783, Rev. C. 1907; re-en. Sec. 7036, R.C.M. 1921; Cal. Civ. C. Sec. 1337; Field Civ. C. Sec. 599; re-en. Sec. 7036, R.C.M. 1935; R.C.M. 1947, 91-221.

72-11-321. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 496, p. 359, L. 1877; re-en. Sec. 496, 2nd Div. Rev. Stat. 1879; re-en. Sec. 496, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1792, Civ. C. 1895; re-en. Sec. 4785, Rev. C. 1907; re-en. Sec. 7038, R.C.M. 1921; Cal. Civ. C. Sec. 1339; Field Civ. C. Sec. 601; re-en. Sec. 7038, R.C.M. 1935; R.C.M. 1947, 91-223.

72-11-322. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 495, p. 359, L. 1877; re-en. Sec. 495, 2nd Div. Rev. Stat. 1879; re-en. Sec. 495, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1791, Civ. C. 1895; re-en. Sec. 4784, Rev. C. 1907; re-en. Sec. 7037, R.C.M. 1921; Cal. Civ. C. Sec. 1338; Field Civ. C. Sec. 600; re-en. Sec. 7037, R.C.M. 1935; R.C.M. 1947, 91-222.

72-11-323 through 72-11-330 reserved.

72-11-331. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 499, p. 359, L. 1877; re-en. Sec. 499, 2nd Div. Rev. Stat. 1879; re-en. Sec. 499, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1795, Civ. C. 1895; re-en. Sec. 4788, Rev. C. 1907; re-en. Sec. 7041, R.C.M. 1921; Cal. Civ. C. Sec. 1342; Field Civ. C. Sec. 604; re-en. Sec. 7041, R.C.M. 1935; R.C.M. 1947, 91-226.

72-11-332. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 501, p. 359, L. 1877; re-en. Sec. 501, 2nd Div. Rev. Stat. 1879; re-en. Sec. 501, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1797, Civ. C. 1895; re-en. Sec. 4790, Rev. C. 1907; re-en. Sec. 7043, R.C.M. 1921; Cal. Civ. C. Sec. 1344; Field Civ. C. Sec. 606; re-en. Sec. 7043, R.C.M. 1935; R.C.M. 1947, 91-228.

72-11-333. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 2, p. 555, Cod. Stat. 1871; re-en. Sec. 471, p. 355, L. 1877; re-en. Sec. 471, 2nd Div. Rev. Stat. 1879; re-en. Sec. 471, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1756, Civ. C. 1895; re-en. Sec. 4759, Rev. C. 1907; re-en. Sec. 7013, R.C.M. 1921; Cal. Civ. C. Sec. 1311; re-en. Sec. 7013, R.C.M. 1935; R.C.M. 1947, 91-140.

72-11-334. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1, p. 69, L. 1893; re-en. Sec. 1759, Civ. C. 1895; re-en. Sec. 4762, Rev. C. 1907; re-en. Sec. 7015, R.C.M. 1921; Cal. Civ. C. Sec. 1313; re-en. Sec. 7015, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1945; R.C.M. 1947, 91-142.

CHAPTER 12

PROBATE AND ADMINISTRATION SUPPLEMENTARY PROVISIONS

Part 1 — General Provisions (Repealed)

Part 2 — Will Contest — Procedure

72-12-201. Repealed.
72-12-202. Repealed.
72-12-203. Repealed.
72-12-204. Repealed.
72-12-205. Repealed.
72-12-206. Fees and expenses — by whom paid.

Part 3 — Lost Wills — Procedure (Repealed)

Part 4 — Handwriting Analysis

72-12-401. Petition for handwriting analysis.
72-12-402. Court to determine necessity of procedure and qualifications of expert.
72-12-403. Clerk to mail will to expert — notice.
72-12-404. Expert to return will to clerk.
72-12-405. Expert to mail report to petitioner.
72-12-406. Petitioner to pay all fees.
72-12-407. Report property of petitioner unless interested party shares fees.

Part 5 — Personal Representative (Repealed)

Part 6 — Third Parties Handling Estate Property — Recovery — Account (Repealed)

Part 7 — Powers and Duties of Surviving Partner (Repealed)

Part 8 — Claims Against Estate (Repealed)

Part 9 — Special Provisions Relating to Distribution (Repealed)

Part 10 — Closing Estates — Accounting (Repealed)

Part 1
General Provisions
(Repealed)

72-12-101. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2900, C. Civ. Proc. 1895; re-en. Sec. 7698, Rev. C. 1907; re-en. Sec. 10352, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1699; re-en. Sec. 10352, R.C.M. 1935; amd. Sec. 2, Ch. 24, L. 1969; R.C.M. 1947, 91-4201.

72-12-102. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2901, C. Civ. Proc. 1895; re-en. Sec. 7699, Rev. C. 1907; re-en. Sec. 10353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1700; re-en. Sec. 10353, R.C.M. 1935; R.C.M. 1947, 91-4202.

72-12-103. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2902, C. Civ. Proc. 1895; re-en. Sec. 7700, Rev. C. 1907; re-en. Sec. 10354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1701; re-en. Sec. 10354, R.C.M. 1935; R.C.M. 1947, 91-4203.

72-12-104. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Secs. 509-530, pp. 360-363, L. 1877; re-en. Secs. 509-530, 2nd Div. Rev. Stat. 1879; re-en. Secs. 509-530, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1828, Civ. C. 1895; re-en. Sec. 4806, Rev. C. 1907; re-en. Sec. 7059, R.C.M. 1921; Cal. Civ. C. Sec. 1365; Field Civ. C. Sec. 622; re-en. Sec. 7059, R.C.M. 1935; R.C.M. 1947, 91-309.

Part 2
Will Contest — Procedure

72-12-201. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 21, p. 245, L. 1877; re-en. Sec. 21, 2nd Div. Rev. Stat. 1879; re-en. Sec. 21, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2341, C. Civ. Proc. 1895; re-en. Sec. 7398, Rev. C. 1907; re-en. Sec. 10033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1313; re-en. Sec. 10033, R.C.M. 1935; R.C.M. 1947, 91-902.

72-12-202. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 22, p. 245, L. 1877; re-en. Sec. 22, 2nd Div. Rev. Stat. 1879; re-en. Sec. 22, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2342, C. Civ. Proc. 1895; re-en. Sec. 7399, Rev. C. 1907; re-en. Sec. 10034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1314; re-en. Sec. 10034, R.C.M. 1935; R.C.M. 1947, 91-903.

72-12-203. Repealed. Sec. 134, Ch. 494, L. 1993.

History: (1)En. Sec. 24, p. 246, L. 1877; re-en. Sec. 24, 2nd Div. Rev. Stat. 1879; re-en. Sec. 24, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2344, C. Civ. Proc. 1895; re-en. Sec. 7401, Rev. C. 1907; re-en. Sec. 10036, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1316; re-en. Sec. 10036, R.C.M. 1935; Sec. 91-905, R.C.M. 1947; (2)En. Sec. 26, p. 246, L. 1877; re-en. Sec. 26, p. 197, 2nd Div. Rev. Stat. 1879; re-en. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 2346, C. Civ. Proc. 1895; re-en. Sec. 7403, Rev. C. 1907; re-en. Sec. 10038, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1318; re-en. Sec. 10038, R.C.M. 1935; Sec. 91-907, R.C.M. 1947; R.C.M. 1947, 91-905, 91-907(part).

72-12-204. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 25, p. 246, L. 1877; re-en. Sec. 25, 2nd Div. Rev. Stat. 1879; re-en. Sec. 25, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2345, C. Civ. Proc. 1895; re-en. Sec. 7402, Rev. C. 1907; re-en. Sec. 10037, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1317; re-en. Sec. 10037, R.C.M. 1935; R.C.M. 1947, 91-906.

72-12-205. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 26, p. 246, L. 1877; re-en. Sec. 26, p. 197, 2nd Div. Rev. Stat. 1879; re-en. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 2346, C. Civ. Proc. 1895; re-en. Sec. 7403, Rev. C. 1907; re-en. Sec. 10038, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1318; re-en. Sec. 10038, R.C.M. 1935; R.C.M. 1947, 91-907(part).

72-12-206. Fees and expenses — by whom paid. When the validity or probate of a will is contested through court action, the attorney fees and costs, as provided in 25-10-201, incurred in defending the validity or probate of the will must be paid by the party contesting the validity or probate of the will if the will in probate is confirmed. If the probate is revoked, costs, as provided in 25-10-201, but not attorney fees, must be paid by the party who resisted the revocation or out of the property of the decedent, as the court directs.

History: En. Sec. 35, p. 248, L. 1877; re-en. Sec. 35, 2nd Div. Rev. Stat. 1879; re-en. Sec. 35, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2365, C. Civ. Proc. 1895; re-en. Sec. 7412, Rev. C. 1907; re-en. Sec. 10047, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1332; re-en. Sec. 10047, R.C.M. 1935; amd. Sec. 16, Ch. 365, L. 1974; R.C.M. 1947, 91-1106; amd. Sec. 80, Ch. 494, L. 1993.

Part 3
Lost Wills — Procedure
(Repealed)

72-12-301. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 39, p. 249, L. 1877; re-en. Sec. 39, 2nd Div. Rev. Stat. 1879; re-en. Sec. 39, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2372, C. Civ. Proc. 1895; re-en. Sec. 7416, Rev. C. 1907; re-en. Sec. 10051, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1340; re-en. Sec. 10051, R.C.M. 1935; R.C.M. 1947, 91-1203.

72-12-302. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 40, p. 249, L. 1877; re-en. Sec. 40, 2nd Div. Rev. Stat. 1879; re-en. Sec. 40, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2373, C. Civ. Proc. 1895; re-en. Sec. 7417, Rev. C. 1907; re-en. Sec. 10052, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1341; re-en. Sec. 10052, R.C.M. 1935; R.C.M. 1947, 91-1204.

Part 4
Handwriting Analysis

72-12-401. Petition for handwriting analysis. In a proceeding involving the probate, either contested or uncontested, of a will in which the signature of the testator or of any witness is an issue, any party to the proceeding may file with the court a verified petition requesting that the original be delivered to a handwriting expert residing and having a place of business outside the state or outside the county for an examination of any of the signatures on the will.

History: En. Sec. 1, Ch. 13, L. 1974; R.C.M. 1947, 91-813; amd. Sec. 2442, Ch. 56, L. 2009.

72-12-402. Court to determine necessity of procedure and qualifications of expert. The court, upon notice and hearing, shall determine whether the procedure is justified by the circumstances of the case and whether the handwriting expert specified in the petition is a qualified professional handwriting expert.

History: En. Sec. 2, Ch. 13, L. 1974; R.C.M. 1947, 91-814.

72-12-403. Clerk to mail will to expert — notice. If the court grants the petition for delivery of the original will to a qualified handwriting expert residing and having a place of business outside the county or state, the clerk of court shall make at least two photocopies of the original will, which photocopies must remain in the custody of the clerk of court. The clerk shall mail the original will by certified mail, return receipt requested, to the handwriting expert specified in the order and shall give notice of the mailing by mailing copies of the order to each of the parties to the proceeding and to the handwriting expert.

History: En. Sec. 3, Ch. 13, L. 1974; R.C.M. 1947, 91-815; amd. Sec. 2443, Ch. 56, L. 2009.

72-12-404. Expert to return will to clerk. Upon completion of the analysis, the handwriting expert shall return the original will to the clerk of court by certified mail, return receipt requested.

History: En. Sec. 4, Ch. 13, L. 1974; R.C.M. 1947, 91-816; amd. Sec. 2444, Ch. 56, L. 2009.

72-12-405. Expert to mail report to petitioner. Unless the court orders another disposition of the written report, the handwriting expert, upon completion of the analysis, shall mail the expert's written report to the party who requested it.

History: En. Sec. 5, Ch. 13, L. 1974; R.C.M. 1947, 91-817; amd. Sec. 2445, Ch. 56, L. 2009.

72-12-406. Petitioner to pay all fees. All fees and expenses arising from the procedure outlined in this part, including the cost of photocopying the will, the expense of all registered or certified mailings, and the handwriting expert's fee, shall be paid by the party requesting the handwriting analysis.

History: En. Sec. 6, Ch. 13, L. 1974; R.C.M. 1947, 91-818.

Cross-References

Witness fees — expert witnesses, 26-2-505.

72-12-407. Report property of petitioner unless interested party shares fees. Unless the court otherwise orders, the handwriting expert's written report must be the sole and exclusive property of the party requesting it. However, upon demand and the payment of a pro rata share of the fees and costs of the handwriting expert, as determined by the court, any interested party may obtain a certified copy of the written report.

History: En. Sec. 7, Ch. 13, L. 1974; R.C.M. 1947, 91-819; amd. Sec. 2446, Ch. 56, L. 2009.

Part 5
Personal Representative
(Repealed)

72-12-501. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 57, p. 254, L. 1877; re-en. Sec. 57, 2nd Div. Rev. Stat. 1879; re-en. Sec. 57, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2432, C. Civ. Proc. 1895; re-en. Sec. 7434, Rev. C. 1907; re-en. Sec. 10070, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1367; re-en. Sec. 10070, R.C.M. 1935; R.C.M. 1947, 91-1403.

72-12-502. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 166, p. 282, L. 1877; re-en. Sec. 166, 2nd Div. Rev. Stat. 1879; re-en. Sec. 166, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2619, C. Civ. Proc. 1895; re-en. Sec. 7541, Rev. C. 1907; re-en. Sec. 10190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1509; re-en. Sec. 10190, R.C.M. 1935; R.C.M. 1947, 91-2721.

72-12-503. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 231, p. 301, L. 1877; re-en. Sec. 231, 2nd Div. Rev. Stat. 1879; re-en. Sec. 231, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2736, C. Civ. Proc. 1895; re-en. Sec. 7609, Rev. C. 1907; re-en. Sec. 10263, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1587; re-en. Sec. 10263, R.C.M. 1935; R.C.M. 1947, 91-3207.

Part 6
Third Parties Handling Estate Property — Recovery — Account
(Repealed)

72-12-601. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 129, p. 270, L. 1877; re-en. Sec. 129, 2nd Div. Rev. Stat. 1879; re-en. Sec. 129, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2570, C. Civ. Proc. 1895; re-en. Sec. 7504, Rev. C. 1907; re-en. Sec. 10140, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1458; re-en. Sec. 10140, R.C.M. 1935; amd. Sec. 66, Ch. 359, L. 1977; R.C.M. 1947, 91-2301.

72-12-602. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 130, p. 270, L. 1877; re-en. Sec. 130, 2nd Div. Rev. Stat. 1879; re-en. Sec. 130, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2571, C. Civ. Proc. 1895; re-en. Sec. 7505, Rev. C. 1907; re-en. Sec. 10141, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1459; re-en. Sec. 10141, R.C.M. 1935; amd. Sec. 67, Ch. 359, L. 1977; R.C.M. 1947, 91-2302.

72-12-603. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1460; re-en. Sec. 10142, R.C.M. 1935; amd. Sec. 68, Ch. 359, L. 1977; R.C.M. 1947, 91-2303(part).

72-12-604. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1460; re-en. Sec. 10142, R.C.M. 1935; amd. Sec. 68, Ch. 359, L. 1977; R.C.M. 1947, 91-2303(part).

72-12-605. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 132, p. 271, L. 1877; re-en. Sec. 132, 2nd Div. Rev. Stat. 1879; re-en. Sec. 132, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2573, C. Civ. Proc. 1895; re-en. Sec. 7507, Rev. C. 1907; re-en. Sec. 10143, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1461; re-en. Sec. 10143, R.C.M. 1935; R.C.M. 1947, 91-2304.

Part 7
Powers and Duties of Surviving Partner
(Repealed)

72-12-701. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-702. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-703. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-704. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

Part 8
Claims Against Estate
(Repealed)

72-12-801. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 152, p. 277, L. 1877; re-en. Sec. 152, 2nd Div. Rev. Stat. 1879; re-en. Sec. 152, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2605, C. Civ. Proc. 1895; re-en. Sec. 7527, Rev. C. 1907; re-en. Sec. 10175, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1495; re-en. Sec. 10175, R.C.M. 1935; amd. Sec. 9, Ch. 263, L. 1975; R.C.M. 1947, 91-2706.

72-12-802. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 158, p. 279, L. 1877; re-en. Sec. 158, 2nd Div. Rev. Stat. 1879; re-en. Sec. 158, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2611, C. Civ. Proc. 1895; re-en. Sec. 7533, Rev. C. 1907; re-en. Sec. 10182, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1501; re-en. Sec. 10182, R.C.M. 1935; R.C.M. 1947, 91-2713; amd. Sec. 15, Ch. 6, L. 1979.

72-12-803. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 170, p. 283, L. 1877; re-en. Sec. 170, 2nd Div. Rev. Stat. 1879; re-en. Sec. 170, 2nd Div. Comp. Stat. 1887; amd. Sec. 2623, C. Civ. Proc. 1895; re-en. Sec. 7545, Rev. C. 1907; re-en. Sec. 10194, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1513; re-en. Sec. 10194, R.C.M. 1935; amd. Sec. 10, Ch. 263, L. 1975; R.C.M. 1947, 91-2725.

Part 9
Special Provisions Relating to Distribution
(Repealed)

72-12-901. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 123, p. 268, L. 1877; re-en. Sec. 123, 2nd Div. Rev. Stat. 1879; re-en. Sec. 123, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2555, C. Civ. Proc. 1895; re-en. Sec. 7498, Rev. C. 1907; re-en. Sec. 10134, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1448; re-en. Sec. 10134, R.C.M. 1935; R.C.M. 1947, 91-2206.

Part 10
Closing Estates — Accounting
(Repealed)

72-12-1001. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 248, p. 305, L. 1877; re-en. Sec. 248, 2nd Div. Rev. Stat. 1879; re-en. Sec. 248, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2771, C. Civ. Proc. 1895; re-en. Sec. 7628, Rev. C. 1907; re-en. Sec. 10282, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1613; re-en. Sec. 10282, R.C.M. 1935; R.C.M. 1947, 91-3402.

72-12-1002. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 249, p. 305, L. 1877; re-en. Sec. 249, 2nd Div. Rev. Stat. 1879; re-en. Sec. 249, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2772, C. Civ. Proc. 1895; re-en. Sec. 7629, Rev. C. 1907; re-en. Sec. 10283, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1614; re-en. Sec. 10283, R.C.M. 1935; R.C.M. 1947, 91-3403.

72-12-1003. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 250, p. 305, L. 1877; re-en. Sec. 250, 2nd Div. Rev. Stat. 1879; re-en. Sec. 250, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2773, C. Civ. Proc. 1895; re-en. Sec. 7630, Rev. C. 1907; re-en. Sec. 10284, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1615; re-en. Sec. 10284, R.C.M. 1935; R.C.M. 1947, 91-3404.

72-12-1004. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 252, p. 305, L. 1877; re-en. Sec. 252, 2nd Div. Rev. Stat. 1879; re-en. Sec. 252, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2775, C. Civ. Proc. 1895; re-en. Sec. 7632, Rev. C. 1907; re-en. Sec. 10286, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1617; re-en. Sec. 10286, R.C.M. 1935; amd. Sec. 13, Ch. 365, L. 1974; R.C.M. 1947, 91-3406.

CHAPTER 13
PERSONS UNDER DISABILITY SUPPLEMENTARY PROVISIONS
(Repealed)

Part 1 — Actions on Guardian's Bond — Limitations (Repealed)

Part 2 — Joint Guardians (Repealed)

Part 3 — Nonresidents Under Disability (Repealed)

Part 1
Actions on Guardian's Bond — Limitations (Repealed)

72-13-101. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 403, p. 344, L. 1877; re-en. Sec. 403, 2nd Div. Rev. Stat. 1879; re-en. Sec. 403, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3054, C. Civ. Proc. 1895; re-en. Sec. 7811, Rev. C. 1907; re-en. Sec. 10459, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1804; re-en. Sec. 10459, R.C.M. 1935; R.C.M. 1947, 91-5206.

72-13-102. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 404, p. 344, L. 1877; re-en. Sec. 404, 2nd Div. Rev. Stat. 1879; re-en. Sec. 404, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3055, C. Civ. Proc. 1895; re-en. Sec. 7812, Rev. C. 1907; re-en. Sec. 10460, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1805; re-en. Sec. 10460, R.C.M. 1935; R.C.M. 1947, 91-5207.

72-13-103. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 405, p. 344, L. 1877; re-en. Sec. 405, 2nd Div. Rev. Stat. 1879; re-en. Sec. 405, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3056, C. Civ. Proc. 1895; re-en. Sec. 7813, Rev. C. 1907; re-en. Sec. 10461, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1806; re-en. Sec. 10461, R.C.M. 1935; R.C.M. 1947, 91-5208.

Part 2
Joint Guardians (Repealed)

72-13-201. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 406, p. 344, L. 1877; re-en. Sec. 406, 2nd Div. Rev. Stat. 1879; re-en. Sec. 406, 2nd Div. Comp. Stat. 1887; amd. Sec. 3057, C. Civ. Proc. 1895; re-en. Sec. 7814, Rev. C. 1907; re-en. Sec. 10462, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1807; re-en. Sec. 10462, R.C.M. 1935; R.C.M. 1947, 91-5209.

72-13-202. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 374, p. 337, L. 1877; re-en. Sec. 374, 2nd Div. Rev. Stat. 1879; re-en. Sec. 374, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2987, C. Civ. Proc. 1895; re-en. Sec. 7776, Rev. C. 1907; re-en. Sec. 10424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1775; re-en. Sec. 10424, R.C.M. 1935; R.C.M. 1947, 91-4908.

72-13-203. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 425, p. 348, L. 1877; re-en. Sec. 425, 2nd Div. Rev. Stat. 1879; re-en. Sec. 425, 2nd Div. Comp. Stat. 1887; re-en. Sec. 346, Civ. C. 1895; re-en. Sec. 3789, Rev. C. 1907; re-en. Sec. 5884, R.C.M. 1921; Cal. Civ. C. Sec. 252; Field Civ. C. Sec. 133; re-en. Sec. 5884, R.C.M. 1935; R.C.M. 1947, 91-4521.

Part 3
Nonresidents Under Disability (Repealed)

72-13-301. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 417, p. 346, L. 1877; re-en. Sec. 417, 2nd Div. Rev. Stat. 1879; re-en. Sec. 417, 2nd Div. Comp. Stat. 1887; re-en. Sec. 338, Civ. C. 1895; re-en. Sec. 3781, Rev. C. 1907; re-en. Sec. 5876, R.C.M. 1921; Field Civ. C. Sec. 125; re-en. Sec. 5876, R.C.M. 1935; R.C.M. 1947, 91-4509.

CHAPTER 14
ESCHEATED ESTATES

Part 1 — General Provisions

72-14-101. Short title.
72-14-102. When title to escheated property vests in state.
72-14-103. Duty of attorney general — employment of special assistant.

Part 2 — Procedure for State Acquisition of Escheatable Property

72-14-201. Discovery to determine existence of escheatable property.
72-14-202. Public administrator to deposit money with county treasurer — disbursement for administration — accounts.
72-14-203. Investment of deposited moneys pending proceedings.
72-14-204. Order directing sale of property upon final settlement of estate.
72-14-205. Unsold intangible personal property — how disposed of — auction sale.
72-14-206. Unsold real property — how disposed of — auction sale.
72-14-207. Unsold tangible personal property — how disposed of — auction sale.
72-14-208. Sales by department of revenue and county treasurer — how conducted.
72-14-209. Deposit of all sums escheated — private purpose trust fund.
72-14-210. Private purpose trust fund money to be held in trust — deposit in public school permanent fund.

Part 3 — Actions for Claim of Escheated Property

72-14-301. Filing of action — service — applicability of other procedural provisions.
72-14-302. Statute of limitations.
72-14-303. Repealed.

Part 4 — Fiduciary Deposit in Certain Cases Claims — Escheat

72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher.
72-14-402. Claim for money deposited in county treasury.
72-14-403. Deposit of unclaimed property in state treasury — escheat.

Part 1
General Provisions

72-14-101. Short title. Parts 1 through 3 of this chapter are to be known as the "Escheated Estates Act".

History: En. Sec. 1, Ch. 184, L. 1943; R.C.M. 1947, 91-501; amd. Sec. 16, Ch. 6, L. 1979; amd. Sec. 1, Ch. 628, L. 1979.

72-14-102. When title to escheated property vests in state. (1) Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, the title vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding and there is no presumption that the owner died leaving heirs or next of kin.

(2) This chapter does not apply to any rural electric or telephone cooperative organized under Title 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are made by the cooperative to a member or former member and that remain unclaimed for 5 years.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 17, Ch. 6, L. 1979; amd. Sec. 2, Ch. 628, L. 1979; amd. Sec. 5, Ch. 263, L. 1993; amd. Sec. 31, Ch. 124, L. 1997.

Cross-References

Escheat to state when no taker, 72-2-115.

72-14-103. Duty of attorney general — employment of special assistant. (1) The attorney general of the state of Montana shall be the legal adviser in connection with all escheated property matters, and it is the duty of the attorney general to institute investigations and conduct inquiries for the discovery of all real and personal property which may have escheated or should escheat to the state and for that purpose has the power to cite any and all persons before any of the district courts of this state to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property is discovered which should escheat to the state, the attorney general must institute suit in the district court of the county where said property shall be situated for the recovery and to escheat the same to the state and shall take all steps necessary to secure such escheat. The proceedings in all such actions shall be those provided for in parts 1 through 3 of this chapter.

(2) For this purpose the attorney general is authorized and empowered to employ a special assistant and incur necessary expenses subject to appropriation limitations.

History: **Ap. p. Sec. 463, Pol. C. 1895; re-en. Sec. 200, Rev. C. 1907; re-en. Sec. 206, R.C.M. 1921; Cal. Pol. C. Sec. 474; re-en. Sec. 206, R.C.M. 1935; Sec. 82-409, R.C.M. 1947; Ap. p. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953; amd. Sec. 115, Ch. 147, L. 1963; amd. Sec. 1, Ch. 377, L. 1971; Sec. 91-512, R.C.M. 1947; R.C.M. 1947, 82-409, 91-512.**

Part 2
Procedure for State Acquisition of Escheatable Property

Part Cross-References

Presentation of claims against county, 7-6-2421.

72-14-201. Discovery to determine existence of escheatable property. In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it is lawful for the attorney general or the attorney general's assistant to obtain discovery on motion in the district court requiring any person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat or any other information pertinent to the recovery of property by the state of Montana or information that may lead to the discovery of the escheatable property.

History: **En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 2447, Ch. 56, L. 2009.**

72-14-202. Public administrator to deposit money with county treasurer — disbursement for administration — accounts. (1) A public administrator shall, as soon as the public administrator receives the money, deposit with the county treasurer of the county in which probate proceedings are pending all money of the estate. The money may be drawn upon the order of the public administrator, countersigned by a district judge, when required for the purposes of administration.

(2) The county treasurer shall receive and safely keep all money and pay the money out upon the order of the public administrator, when countersigned by a district judge and not otherwise, and keep an account with the estate of all money received and paid to the county treasurer. The treasurer and the treasurer's sureties are liable upon the treasurer's official bond for the safekeeping and payment of all money as provided in this section.

History: **En. Sec. 3, Ch. 184, L. 1943; R.C.M. 1947, 91-503; amd. Sec. 2448, Ch. 56, L. 2009.**

Cross-References

Public Administrator, 7-3-441.

Office of Public Administrator, 7-4-3004.

72-14-203. Investment of deposited moneys pending proceedings. The moneys thus deposited may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state, when such investment is for the best interests of the estate.

History: **En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973; R.C.M. 1947, 91-504(part).**

72-14-204. Order directing sale of property upon final settlement of estate. At the final settlement of an estate, if there are no heirs or other claimants, the district judge shall order the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer. The county treasurer shall keep an account of the money received from each estate and paid to the county treasurer and shall remit the money to the department of revenue with a statement of the estate to which the money belongs. The department shall immediately deliver the money to the state treasurer for deposit in the private purpose trust fund.

History: **En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973; R.C.M. 1947, 91-504(part); amd. Sec. 4, Ch. 5, L. 1995; amd. Sec. 22, Ch. 34, L. 2001.**

72-14-205. Unsold intangible personal property — how disposed of — auction sale. (1) If the intangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate, then the personal representative shall deliver all of the property to the department of revenue with a statement setting forth the name of the estate to which it belongs. The department shall, within 1 year of the receipt of the property, sell the property to the highest bidder at a public auction sale at the department's office in Helena, Montana.

(2) The department shall give notice of the sale by publication in a Helena newspaper once a week for 2 successive weeks. The last publication must be at least 20 days prior to the date of the sale. The notice must give the time and place of the sale and must contain a list and description of the stocks, bonds, securities, or other intangible personal property to be sold.

(3) All of the expenses of the sale must be deducted from the proceeds of the sale by the department, and the balance of the proceeds must be delivered by the department to the state treasurer for deposit in the private purpose trust fund.

History: En. Sec. 5, Ch. 184, L. 1943; amd. Sec. 112, Ch. 147, L. 1963; amd. Sec. 3, Ch. 156, L. 1971; amd. Sec. 69, Ch. 391, L. 1973; R.C.M. 1947, 91-505; amd. Sec. 3, Ch. 628, L. 1979; amd. Sec. 5, Ch. 5, L. 1995; amd. Sec. 23, Ch. 34, L. 2001.

72-14-206. Unsold real property — how disposed of — auction sale. (1) If the real property was not sold by the personal representative at the final settlement of the estate, then the personal representative shall make and execute to the state of Montana a deed and deliver the deed to the county clerk and recorder of the county in which the real property is situated. The county clerk and recorder shall file and record the deed without charge and shall mail the deed to the department of revenue. The department of revenue shall record the deed and deliver it to the board of land commissioners.

(2) Within 1 year after the receipt of the recorded deed, the board shall sell the property to the highest bidder at a public auction sale to be held at the courthouse in the county where the real property or any part of the property is situated.

(3) The board shall give notice of the sale by publication once a week for 2 weeks in a newspaper published in the county in which the real estate or any part of the real estate is situated. The last publication must be at least 20 days prior to the date of the sale. The notice must give the time and place of the sale and contain a description of the real property to be sold.

(4) All expenses of the sale must be deducted by the board from the proceeds of the sale, and the balance of the proceeds must be turned over to the state treasurer for deposit in the private purpose trust fund. The board shall provide the department with a statement indicating the sale price, expenses, and net proceeds resulting from each sale.

History: En. Sec. 6, Ch. 184, L. 1943; amd. Sec. 113, Ch. 147, L. 1963; amd. Sec. 4, Ch. 156, L. 1971; amd. Sec. 70, Ch. 391, L. 1973; R.C.M. 1947, 91-506; amd. Sec. 4, Ch. 628, L. 1979; amd. Sec. 6, Ch. 5, L. 1995; amd. Sec. 24, Ch. 34, L. 2001.

72-14-207. Unsold tangible personal property — how disposed of — auction sale. (1) If the tangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate, the personal representative shall deliver the property to the county treasurer. The county treasurer shall, within 1 year of the receipt of the property, sell it to the highest bidder at a public auction sale at the county seat of the county of administration of the estate.

(2) The county treasurer shall give notice of the sale by publication once a week for 2 successive weeks in a newspaper published in the county of administration. The last publication must be at least 20 days prior to the date of the sale. The notice must give the time and place of the sale and must contain a description of the property to be sold.

(3) All expenses of the sale must be deducted from the proceeds of the sale by the county treasurer, and the balance of the proceeds must be delivered by the county treasurer to the department of revenue for deposit in the private purpose trust fund.

History: En. Sec. 7, Ch. 184, L. 1943; amd. Sec. 114, Ch. 147, L. 1963; amd. Sec. 5, Ch. 156, L. 1971; amd. Sec. 71, Ch. 391, L. 1973; R.C.M. 1947, 91-507; amd. Sec. 5, Ch. 628, L. 1979; amd. Sec. 7, Ch. 5, L. 1995; amd. Sec. 25, Ch. 34, L. 2001.

72-14-208. Sales by department of revenue and county treasurer — how conducted. All hereinbefore mentioned sales by the department of revenue or county treasurer must be for cash at public auction and shall be made to the highest bidder. However, the seller may reject all bids which are disproportionate to the value of the property being sold.

History: En. Sec. 8, Ch. 184, L. 1943; amd. Sec. 6, Ch. 156, L. 1971; amd. Sec. 72, Ch. 391, L. 1973; R.C.M. 1947, 91-508; amd. Sec. 6, Ch. 628, L. 1979.

72-14-209. Deposit of all sums escheated — private purpose trust fund. All sums escheated under the provisions of parts 1 through 3 of this chapter must be delivered by the department of revenue to the state treasurer and deposited by the treasurer in the private purpose trust fund.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 7, Ch. 628, L. 1979; amd. Sec. 8, Ch. 5, L. 1995; amd. Sec. 26, Ch. 34, L. 2001.

72-14-210. Private purpose trust fund money to be held in trust — deposit in public school permanent fund. Money and property placed in the private purpose trust fund must be held in trust for a period of 5 years prior to deposit in the public school permanent fund by the state treasurer. The private purpose trust is for the benefit of persons who claim property pursuant to part 3 of this chapter. A claim may be brought for an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the property to the possession of the state.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 8, Ch. 628, L. 1979; amd. Sec. 31, Ch. 281, L. 1983; amd. Sec. 9, Ch. 5, L. 1995; amd. Sec. 27, Ch. 34, L. 2001.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.
Treasury fund structure, 17-2-102.

Part 3
Actions for Claim of Escheated Property

72-14-301. Filing of action — service — applicability of other procedural provisions. (1) Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark County, Montana, against the state treasurer.

(2) In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general, and one must be served upon the director of revenue.

(3) Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part).

72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to minors and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part); amd. Sec. 9, Ch. 628, L. 1979; amd. Sec. 11, Ch. 2, L. 1983.

72-14-303. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part); amd. Sec. 10, Ch. 628, L. 1979.

Part 4
Fiduciary Deposit in Certain Cases
Claims — Escheat

72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher. When property in the hands of a personal representative, trustee, or other fiduciary is assigned or distributed to any heir, legatee, devisee, creditor, beneficiary, or person interested in an estate or trust who does not have an agent in this state or who cannot be found or who refuses to accept the property or to give a proper voucher for the property or to a minor or incompetent person who does not have a legal guardian to receive the property or person authorized to receipt for the property and the property or any part of the property consists of money, the personal representative, trustee, or other fiduciary may deposit the money in a special fund in the name of the heir, legatee, devisee, creditor, beneficiary, or person interested with the county treasurer of the county in which the proceedings are pending or in which the property is located. The county treasurer shall give a receipt for the money and is liable upon the treasurer”s official bond. The receipt must be considered and received by the court or judge as a voucher in favor of the personal representative, trustee, or other fiduciary with the same force and effect as if executed by the heir, legatee, devisee, creditor, beneficiary, or person interested.

History: En. Sec. 1, Ch. 128, L. 1947; R.C.M. 1947, 91-524; amd. Sec. 11, Ch. 628, L. 1979; amd. Sec. 2449, Ch. 56, L. 2009.

72-14-402. Claim for money deposited in county treasury. When any person appears and claims the money paid into the county treasury, the district court of the county shall inquire into the claim and, if satisfied of the person's right to the money, shall make an order to that effect. Upon presentation of the order, the treasurer shall draw a warrant on the special fund for the amount to which the claimant is entitled.

History: En. Sec. 2, Ch. 128, L. 1947; R.C.M. 1947, 91-525; amd. Sec. 2450, Ch. 56, L. 2009.

72-14-403. Deposit of unclaimed property in state treasury — escheat. (1) All money or other property distributed in the administration of an estate of a decedent or as the subject of a trust and deposited with the county treasurer to the credit of the distributee or beneficiary and any money remaining on deposit to the credit of an estate after final distribution must, within 1 year of receipt by the county treasurer, be delivered into the state treasury for deposit in the private purpose trust fund.

(2) If money or other property deposited in the state treasury is not claimed by the person or persons entitled to the property by bringing an action as provided in part 3 of this chapter, the money or property escheats to the state and must be placed in the public school permanent fund.

History: En. Sec. 3, Ch. 128, L. 1947; amd. Sec. 117, Ch. 147, L. 1963; R.C.M. 1947, 91-526; amd. Sec. 12, Ch. 628, L. 1979; amd. Sec. 32, Ch. 281, L. 1983; amd. Sec. 10, Ch. 5, L. 1995; amd. Sec. 28, Ch. 34, L. 2001.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Treasury fund structure, 17-2-102.

CHAPTER 15
PUBLIC ADMINISTRATOR

Part 1 — Powers and Duties in Acquisition of Estates

72-15-101. Other provisions to supplement chapter.
72-15-102. When public administrator to take charge of estate.
72-15-103. Requirement to procure letters of administration — bond and oath.
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72-15-106. Civil officers to notify public administrator of property in danger of loss or waste.
72-15-107. Power to require persons controlling property to furnish statement describing property.
72-15-108. Refusal to furnish statement — misdemeanor.
72-15-109. Order to examine person in possession or charged with misappropriation of estate.
72-15-110. Refusal to be examined — civil contempt.

Part 2 — Powers and Duties in Administration

72-15-201. Duty to make out inventory, administer, and account.
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72-15-203. Power of court to order account and delivery of estate at any time.
72-15-204. Duty to keep register.
72-15-205. Deposit of money with county treasurer — withdrawals for administrative costs — investment.
72-15-206. Monthly settlement of accounts.
72-15-207. Annual account of condition of all estates.

72-15-208. Power of court to require additional report or bond.
72-15-209. Power of public administrator to administer oaths.
72-15-210. Fees — how paid.
72-15-211. Conflict of interest prohibited — affidavit.
72-15-212. Final settlement of estate — sale of property — escheat.
72-15-213. Wrongful failure of public administrator to deposit money — action on bond.

Part 3 — Compensation — Termination of Office

72-15-301. Compensation of public administrator.
72-15-302. Retiring public administrator may close pending estates.
72-15-303. Accounting and surrender of pending estates on retirement of public administrator.
72-15-304. Adjustment of compensation.

Chapter Cross-References

Public Administrator, 7-3-441.

Office of Public Administrator, 7-4-3004.

Part 1
Powers and Duties in Acquisition of Estates

72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of the administrator's duties or for the administration of an estate in the administrator's hands, the provisions of this title govern.

History: En. Sec. 350, p. 330, L. 1877; re-en. Sec. 350, 2nd Div. Rev. Stat. 1879; re-en. Sec. 350, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4528, Pol. C. 1895; re-en. Sec. 3091, Rev. C. 1907; re-en. Sec. 10008, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1743; re-en. Sec. 10008, R.C.M. 1935; R.C.M. 1947, 91-619; amd. Sec. 18, Ch. 6, L. 1979; amd. Sec. 2451, Ch. 56, L. 2009.

72-15-102. When public administrator to take charge of estate. (1) A public administrator who is duly elected, commissioned, and qualified shall take charge of estates of persons dying within the administrator's county as follows:

(a) estates of decedents for which no administrators are appointed and that, in consequence of the lack of administration, are being wasted, uncared for, or lost;

(b) estates of decedents who have no known heirs;

(c) estates ordered into the administrator's hands by the court; and

(d) estates upon which letters of administration have been issued to the administrator by the court.

(2) However, it is unlawful for a public administrator of any county of the state of Montana to file a petition for the issuance to the public administrator as public administrator of letters of administration of the estate of any decedent until at least 30 days have elapsed from the day of the death of the decedent unless it is affirmatively shown and made to appear in and by the petition for letters of administration that there are no known heirs of the decedent or that all of the known heirs of the decedent reside outside of the state of Montana and that the estate of the decedent consists of property of a nature that it will be lost, wasted, or depreciated in value unless cared for and administered upon at once.

History: En. Sec. 333, p. 326, L. 1877; re-en. Sec. 333, 2nd Div. Rev. Stat. 1879; re-en. Sec. 333, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4510, Pol. C. 1895; re-en. Sec. 3073, Rev. C. 1907; re-en. Sec. 9990, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1726; re-en. Sec. 9990, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1941; R.C.M. 1947, 91-601; amd. Sec. 2452, Ch. 56, L. 2009.

Cross-References

Power of court to require additional report or bond, 72-15-208.

72-15-103. Requirement to procure letters of administration — bond and oath. (1) Whenever a public administrator takes charge of an estate under order of the court, the administrator shall with all convenient dispatch procure letters of administration on the estate in the same manner and under the same proceedings as letters of administration are issued to other persons.

(2) The public administrator's official bond and oath are in lieu of a personal representative's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

History: **En. Sec. 334, p. 326, L. 1877; re-en. Sec. 334, 2nd Div. Rev. Stat. 1879; re-en. Sec. 334, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4511, Pol. C. 1895; re-en. Sec. 3074, Rev. C. 1907; re-en. Sec. 9991, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1727; re-en. Sec. 9991, R.C.M. 1935; amd. Sec. 4, Ch. 263, L. 1975; R.C.M. 1947, 91-602; amd. Sec. 2453, Ch. 56, L. 2009.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-15-104. Duty to commence actions for recovery of property. The public administrator must institute all actions and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

History: **En. Sec. 339, p. 327, L. 1877; re-en. Sec. 339, 2nd Div. Rev. Stat. 1879; re-en. Sec. 339, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4516, Pol. C. 1895; re-en. Sec. 3079, Rev. C. 1907; re-en. Sec. 9996, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1732; re-en. Sec. 9996, R.C.M. 1935; R.C.M. 1947, 91-607.**

72-15-105. Duty of persons in whose house stranger dies — notification to public administrator. Whenever a stranger or person without known heirs dies intestate in the house or premises of another, the possessor of the premises or anyone knowing the facts shall give immediate notice to the public administrator of the county. If the possessor does not give the notice, the possessor is liable for any damage that may be sustained by the failure, which must be recovered by the public administrator or any person interested.

History: **En. Sec. 335, p. 326, L. 1877; re-en. Sec. 335, 2nd Div. Rev. Stat. 1879; re-en. Sec. 335, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4512, Pol. C. 1895; re-en. Sec. 3075, Rev. C. 1907; re-en. Sec. 9992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1728; re-en. Sec. 9992, R.C.M. 1935; R.C.M. 1947, 91-603; amd. Sec. 2454, Ch. 56, L. 2009.**

72-15-106. Civil officers to notify public administrator of property in danger of loss or waste. All civil officers must inform the public administrator of all property known to them belonging to a decedent which is liable to loss, injury, or waste and which, by reason thereof, ought to be in the possession of the public administrator.

History: **En. Sec. 338, p. 327, L. 1877; re-en. Sec. 338, 2nd Div. Rev. Stat. 1879; re-en. Sec. 338, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4515, Pol. C. 1895; re-en. Sec. 3078, Rev. C. 1907; re-en. Sec. 9995, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1731; re-en. Sec. 9995, R.C.M. 1935; R.C.M. 1947, 91-606.**

72-15-107. Power to require persons controlling property to furnish statement describing property. Whenever a person dies in any county of this state and an administrator has not been appointed to take charge of the person's estate, the public administrator of the county, prior to the issuance of letters of administration, has authority to make a written demand upon any person, firm, bank, or corporation that the public administrator believes holds or has in its possession or control any money, evidence of indebtedness, or other personal property or that owes to the deceased person any money requiring that entity to furnish to the public administrator a written statement, under oath, showing the amount of money or the evidence of indebtedness or personal property of the deceased person held by it fully describing the evidence or property and the total sums of money, if any, due from it to the deceased person. Upon receipt of the written demand, the person, firm, bank, or corporation receiving the demand shall immediately furnish the statement, under oath, to the public administrator.

History: **En. Sec. 1, Ch. 134, L. 1909; re-en. Sec. 10010, R.C.M. 1921; re-en. Sec. 10010, R.C.M. 1935; R.C.M. 1947, 91-621; amd. Sec. 2455, Ch. 56, L. 2009.**

72-15-108. Refusal to furnish statement — misdemeanor. Any person, firm, bank, or corporation or officer, agent, or employee thereof refusing upon demand to furnish the statement as required by 72-15-107 shall be guilty of a misdemeanor.

History: **En. Sec. 2, Ch. 134, L. 1909; re-en. Sec. 10011, R.C.M. 1921; re-en. Sec. 10011, R.C.M. 1935; R.C.M. 1947, 91-622.**

Cross-References

Penalty when none specified, 46-18-212.

72-15-109. Order to examine person in possession or charged with misappropriation of estate. When the public administrator complains to the district court or a judge of the district court, on oath, that any person has concealed, committed theft of, or disposed of or has in the person's possession any money, goods, property, or effects that the administrator is entitled to possess in the administrator's official capacity, the court or judge may cite the person to appear and may examine the person on oath concerning the matter of the complaint.

History: **En. Sec. 340, p. 328, L. 1877; re-en. Sec. 340, 2nd Div. Rev. Stat. 1879; re-en. Sec. 340, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4517, Pol. C. 1895; re-en. Sec. 3080, Rev. C. 1907; re-en. Sec. 9997, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1733; re-en. Sec. 9997, R.C.M. 1935; amd. Sec. 65, Ch. 359, L. 1977; R.C.M. 1947, 91-608; amd. Sec. 2456, Ch. 56, L. 2009.**

72-15-110. Refusal to be examined — civil contempt. All interrogatories and answers must be reduced to writing and signed by the party examined and filed in the court. If the person cited refuses to appear and submit to the examination or to answer the interrogatories as may be put to the party touching the matter of the complaint, the court or judge may commit the party to the county jail until the party submits to the order of the court or judge.

History: **En. Sec. 341, p. 328, L. 1877; re-en. Sec. 341, 2nd Div. Rev. Stat. 1879; re-en. Sec. 341, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4518, Pol. C. 1895; re-en. Sec. 3081, Rev. C. 1907; re-en. Sec. 9998, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1734; re-en. Sec. 9998, R.C.M. 1935; R.C.M. 1947, 91-609; amd. Sec. 2457, Ch. 56, L. 2009.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 2
Powers and Duties in Administration

72-15-201. Duty to make out inventory, administer, and account. The public administrator shall make out and return an inventory of all estates taken into the administrator's possession and administer and account for the inventory according to the provisions of this chapter, subject to the control and directions of the court.

History: **En. Sec. 336, p. 326, L. 1877; re-en. Sec. 336, 2nd Div. Rev. Stat. 1879; re-en. Sec. 336, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4513, Pol. C. 1895; re-en. Sec. 3076, Rev. C. 1907; re-en. Sec. 9993, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1729, re-en. Sec. 9993, R.C.M. 1935; R.C.M. 1947, 91-604; amd. Sec. 2458, Ch. 56, L. 2009.**

72-15-202. Duty to deliver up estate when letters granted to another. If at any time letters testamentary or of administration are regularly granted to any other person on the estate of which the public administrator has charge, the public administrator shall, under order of the court, account for, pay, and deliver to the executor or administrator appointed all the money, property, papers, and estate of every kind in the public administrator's possession or under the public administrator's control.

History: **En. Sec. 337, p. 327, L. 1877; re-en. Sec. 337, 2nd Div. Rev. Stat. 1879; re-en. Sec. 337, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4514, Pol. C. 1895; re-en. Sec. 3077, Rev. C. 1907; re-en. Sec. 9994, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1730; re-en. Sec. 9994, R.C.M. 1935; R.C.M. 1947, 91-605; amd. Sec. 2459, Ch. 56, L. 2009.**

72-15-203. Power of court to order account and delivery of estate at any time. The court or judge may, at any time, order the public administrator to account for and deliver all the money of an estate in the public administrator's hands to the heirs or to the executors or administrators regularly appointed.

History: **En. Sec. 342, p. 328, L. 1877; re-en. Sec. 342, 2nd Div. Rev. Stat. 1879; re-en. Sec. 342, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4519, Pol. C. 1895; re-en. Sec. 3082, Rev. C. 1907; re-en. Sec. 9999, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1735; re-en. Sec. 9999, R.C.M. 1935; R.C.M. 1947, 91-610; amd. Sec. 2460, Ch. 56, L. 2009.**

72-15-204. Duty to keep register. It is the duty of the public administrator to keep a book to be labeled "Register of Public Administrator" in which the public administrator shall enter:

(1) the name of every deceased person on whose estate the public administrator administers;
(2) the date of granting letters;
(3) money received;
(4) the property and its value;
(5) proceeds of all sales of property;
(6) the amount of the public administrator's fees;
(7) the expenses of administration;
(8) the amount of the estate after all charges and expenses have been paid;
(9) the disposition of the property on distribution;
(10) the date of discharge of administrator; and
(11) other matters that may be necessary to give a full and complete history of each estate administered by the public administrator.

History: **En. Sec. 4529, Pol. C. 1895; re-en. Sec. 3092, Rev. C. 1907; re-en. Sec. 10009, R.C.M. 1921; re-en. Sec. 10009, R.C.M. 1935; R.C.M. 1947, 91-620; amd. Sec. 2461, Ch. 56, L. 2009.**

Cross-References

Public records, Title 2, ch. 6.

72-15-205. Deposit of money with county treasurer — withdrawals for administrative costs — investment. (1) It is the duty of a public administrator, as soon as the public administrator receives money, to deposit with the county treasurer of the county in which probate proceedings are pending all money of the estate, and the money may be drawn upon the order of the personal representative, countersigned by a district judge when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all money and pay it out upon the order of the personal representative, when countersigned by a district judge and not otherwise, and to keep an account with the estate of all money received and paid to the county treasurer. The county treasurer and the sureties of the county treasurer are liable on the treasurer's official bond for the safekeeping and payment of all money.

(3) The money deposited with the county treasurer may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state when the investment is for the best interests of the estate.

History: En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1737; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; re-en. Sec. 10001, R.C.M. 1935; amd. Sec. 14, Ch. 365, L. 1974; R.C.M. 1947, 91-612(part); amd. Sec. 2462, Ch. 56, L. 2009.

72-15-206. Monthly settlement of accounts. The public administrator is required to account and to settle and adjust the public administrator's accounts relating to the care and disbursement of money or property belonging to estates in the public administrator's hands with the clerk of the district court on the first Monday of each month, and the public administrator shall pay to the county treasurer any money remaining in the public administrator's hands of an estate unclaimed.

History: En. Sec. 346, p. 329, L. 1877; re-en. Sec. 346, 2nd Div. Rev. Stat. 1879; re-en. Sec. 346, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4523, Pol. C. 1895; re-en. Sec. 3086, Rev. C. 1907; re-en. Sec. 10003, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1739; re-en. Sec. 10003, R.C.M. 1935; amd. Sec. 5, Ch. 263, L. 1975; R.C.M. 1947, 91-614; amd. Sec. 2463, Ch. 56, L. 2009.

72-15-207. Annual account of condition of all estates. (1) The public administrator shall once each year make to the district court or a judge of the district court, under oath, a return of all estates of decedents that have come into the public administrator's hands stating:

(a) the value of the estates;

(b) the money that has come into the public administrator's hands from each estate;

(c) what the public administrator has done with it;

(d) the amount of fees and expenses incurred by the public administrator; and

(e) the balance, if any, remaining in the public administrator's hands.

(2) The public administrator shall post a copy of the return in the office of the clerk of the district court of the county.

History: En. Sec. 343, p. 329, L. 1877; re-en. Sec. 343, 2nd Div. Rev. Stat. 1879; re-en. Sec. 343, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4520, Pol. C. 1895; re-en. Sec. 3083, Rev. C. 1907; re-en. Sec. 10000, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1736; re-en. Sec. 10000, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1939; R.C.M. 1947, 91-611; amd. Sec. 2464, Ch. 56, L. 2009.

72-15-208. Power of court to require additional report or bond. The court or judge may, at any time, require the public administrator to report the amount of money and property of any estate in the public administrator's hands and may require the public administrator at any time to file an additional bond or bonds.

History: En. Sec. 4527, Pol. C. 1895; re-en. Sec. 3090, Rev. C. 1907; re-en. Sec. 10007, R.C.M. 1921; re-en. Sec. 10007, R.C.M. 1935; R.C.M. 1947, 91-618; amd. Sec. 2465, Ch. 56, L. 2009.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-15-209. Power of public administrator to administer oaths. Public administrators may administer oaths in regard to all matters touching the discharge of their duties or the administration of estates in their hands.

History: En. Sec. 349, p. 330, L. 1877; re-en. Sec. 349, 2nd Div. Rev. Stat. 1879; re-en. Sec. 349, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4526, Pol. C. 1895; re-en. Sec. 3089, Rev. C. 1907; re-en. Sec. 10006, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1742; re-en. Sec. 10006, R.C.M. 1935; R.C.M. 1947, 91-617.

Cross-References

Officers who may administer oaths, 1-6-101.

72-15-210. Fees — how paid. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets of the estates as soon as the assets come into the public administrator's hands.

History: En. Sec. 348, p. 330, L. 1877; re-en. Sec. 348, 2nd Div. Rev. Stat. 1879; re-en. Sec. 348, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4525, Pol. C. 1895; re-en. Sec. 3088, Rev. C. 1907; re-en. Sec. 10005, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1741; re-en. Sec. 10005, R.C.M. 1935; R.C.M. 1947, 91-616; amd. Sec. 2466, Ch. 56, L. 2009.

Cross-References

Compensation of Public Administrator, 72-15-301.

72-15-211. Conflict of interest prohibited — affidavit. The public administrator may not be interested in the expenditures of any kind made on account of any estate that the public administrator administers. The public administrator may not be associated, in business or otherwise, with anyone who is interested in expenditures made on account of an estate that the public administrator administers, and the public administrator shall attach to the report and publication, made in accordance with 72-15-207, the public administrator's affidavit to that effect.

History: En. Sec. 345, p. 329, L. 1877; re-en. Sec. 345, 2nd Div. Rev. Stat. 1879; re-en. Sec. 345, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4522, Pol. C. 1895; re-en. Sec. 3085, Rev. C. 1907; re-en. Sec. 10002, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1738; re-en. Sec. 10002, R.C.M. 1935; R.C.M. 1947, 91-613; amd. Sec. 2467, Ch. 56, L. 2009.

72-15-212. Final settlement of estate — sale of property — escheat. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall credit the same and all other moneys belonging to said estate to the escheated estates fund, and the county treasurer shall forthwith remit all of said money to the department of revenue with a statement as to the estates to which the money belongs, which remittance shall be treated as provided in chapter 14, as amended.

History: En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1737; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; re-en. Sec. 10001, R.C.M. 1935; amd. Sec. 14, Ch. 365, L. 1974; R.C.M. 1947, 91-612(part).

72-15-213. Wrongful failure of public administrator to deposit money — action on bond. When it appears from the returns made in pursuance of this part that any money remains in the hands of the public administrator after final settlement of the estate unclaimed that should be paid over to the county treasurer, the court or judge shall order the money paid over to the county treasurer. On the failure of the public administrator to comply with the order within 10 days after the order is made, the county attorney shall immediately institute the requisite proceedings against the public administrator for a judgment against the public administrator and the sureties on the public administrator's official bond in the amount of the money withheld and costs.

History: En. Sec. 347, p. 330, L. 1877; re-en. Sec. 347, 2nd Div. Rev. Stat. 1879; re-en. Sec. 347, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4524, Pol. C. 1895; re-en. Sec. 3087, Rev. C. 1907; re-en. Sec. 10004, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1740; re-en. Sec. 10004, R.C.M. 1935; R.C.M. 1947, 91-615; amd. Sec. 2468, Ch. 56, L. 2009.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Part 3
Compensation — Termination of Office

72-15-301. Compensation of public administrator. (1) The public administrator must receive and shall collect for the administrator's own use as full compensation for services under this chapter, the amount provided for in 72-3-631.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to the protected person or from the protected person's estate to

be paid to the public administrator as full compensation for the public administrator's services, excluding court costs and attorney fees. The total sum deducted as compensation for the public administrator may not be less than $100.

History: Ap. p. Sec. 8, Ch. 134, L. 1909; re-en. Sec. 10017, R.C.M. 1921; re-en. Sec. 10017, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1969; amd. Sec. 6, Ch. 263, L. 1975; Sec. 91-628, R.C.M. 1947; Ap. p. Sec. 4641, Pol. C. 1895; re-en. Sec. 3174, Rev. C. 1907; re-en. Sec. 4923, R.C.M. 1921; re-en. Sec. 4923, R.C.M. 1935; amd. Sec. 2, Ch. 263, L. 1975; Sec. 25-237, R.C.M. 1947; R.C.M. 1947, 25-237, 91-628; amd. Sec. 2, Ch. 424, L. 1979; amd. Sec. 6, Ch. 362, L. 1985; amd. Sec. 1, Ch. 235, L. 1999; amd. Sec. 102, Ch. 313, L. 2019.

72-15-302. Retiring public administrator may close pending estates. The public administrator, upon the expiration or termination of the term of office, may continue to administer estates not closed by filing and presenting to the court a full and complete account pertaining to each estate not closed and securing a court order granting the public administrator letters of administration and qualifying the public administrator as a personal representative.

History: En. Sec. 1, Ch. 4, L. 1941; amd. Sec. 7, Ch. 263, L. 1975; R.C.M. 1947, 91-629; amd. Sec. 2469, Ch. 56, L. 2009.

72-15-303. Accounting and surrender of pending estates on retirement of public administrator. If the public administrator, upon the expiration or termination of the public administrator's office and within 60 days after that date, fails to qualify as general administrator of estates not yet closed, the public administrator shall, upon demand of the successor to the office or voluntarily if the former public administrator desires to be relieved from further performance of the trust, surrender to the successor all estates not closed and property belonging to the estates after filing and presenting to the court for approval a full and complete account pertaining to each estate not closed.

History: En. Sec. 2, Ch. 4, L. 1941; R.C.M. 1947, 91-630; amd. Sec. 2470, Ch. 56, L. 2009.

72-15-304. Adjustment of compensation. The court shall determine and allow the predecessor in office for services rendered in connection with estates not closed a compensation based upon the commission prescribed and allowed by law in proportion to the services necessarily rendered and those necessary to be rendered by the successor in closing up estates. The successor must be allowed and paid the balance of the commission allowed.

History: En. Sec. 3, Ch. 4, L. 1941; amd. Sec. 8, Ch. 263, L. 1975; R.C.M. 1947, 91-631; amd. Sec. 2471, Ch. 56, L. 2009.

CHAPTER 16
ESTATE AND GENERATION-SKIPPING TAXES

Part 1 — General Provisions (Repealed)

Part 2 — Powers and Duties of State Officers and Agencies (Renumbered and Repealed)

Part 3 — Application and Imposition of Tax — Exemptions and Rates — Property Valuation (Repealed)

Part 4 — Determination and Payment of Tax (Repealed)

Part 5 — Joint Tenancies and Life Estates Determination of Tax — Termination

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72-16-502. Definition of decedent.
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72-16-504. Repealed.
72-16-505. Repealed.

Part 6 — Apportionment of Taxes

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72-16-603. Tax — how apportioned.
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72-16-607. Allowance for exemptions, deductions, and credits.
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72-16-609. Penalties and interest charged to fiduciary when caused by fiduciary's negligence.
72-16-610. Action to recover apportioned tax — limitations on duty to initiate — uncollectibility.

72-16-611. Action to recover apportioned tax — determination of court prima facie correct.
72-16-612. Action by foreign representative to recover apportioned tax.

Part 7 — Estates With Multistate Aspects — Securities Transfer (Repealed)

Part 8 — Nonresident Decedents (Repealed)

Part 9 — Estate Tax

72-16-901. Purpose — liberal construction to effect.
72-16-902. Repealed.
72-16-903. Taxable situs of property.
72-16-904. Estate tax imposed.
72-16-905. Estate tax — how computed.
72-16-906. Required filing of United States estate tax return.
72-16-907. Department to determine tax — rehearing and appeal — rulemaking.
72-16-908. Persons liable for tax.
72-16-909. When and where tax payable — interest.
72-16-910. Extension of time for payment.
72-16-911. Tax lien.
72-16-912. Collection and deposit of tax.
72-16-913 through 72-16-919 reserved.
72-16-920. Repealed.

Part 10 — Generation-Skipping Transfer Tax

72-16-1001. Definitions.
72-16-1002. Imposition of tax.
72-16-1003. Returns — payment.
72-16-1004. Liability for tax — interest on delinquent tax.
72-16-1005. Tax lien.
72-16-1006. Duty to claim maximum credit.
72-16-1007. Rulemaking.

Chapter Cross-References

Disposition of money from certain designated license and other taxes, 17-2-124.

Part 1
General Provisions
(Repealed)

72-16-101. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 22, Ch. 65, L. 1923; re-en. Sec. 10400.43, R.C.M. 1935; amd. Sec. 7, Ch. 490, L. 1977; R.C.M. 1947, 91-4453; amd. Sec. 2, Ch. 288, L. 1997.

72-16-102. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1951; amd. Sec. 81, Ch. 391, L. 1973; amd. Sec. 6, Ch. 365, L. 1974; R.C.M. 1947, 91-4423.

Part 2
Powers and Duties of State Officers and Agencies
(Renumbered and Repealed)

72-16-201. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Secs. 10400.34, 10400.35, R.C.M. 1935; amd. Secs. 95, 96, Ch. 391, L. 1973; R.C.M. 1947, 91-4444, 91-4445(part); amd. Sec. 19, Ch. 6, L. 1979.

72-16-202. Repealed. Sec. 2, Ch. 61, L. 1997.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.35, R.C.M. 1935; amd. Sec. 96, Ch. 391, L. 1973; R.C.M. 1947, 91-4445(part); amd. Sec. 46, Ch. 112, L. 1991; amd. Sec. 40, Ch. 349, L. 1993.

72-16-203. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 24, Ch. 65, L. 1923; re-en. Sec. 10400.45, R.C.M. 1935; amd. Sec. 103, Ch. 391, L. 1973; R.C.M. 1947, 91-4454.

72-16-204. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

72-16-205. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

72-16-206. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

72-16-207. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.38, R.C.M. 1935; amd. Sec. 99, Ch. 391, L. 1973; amd. Sec. 10, Ch. 365, L. 1974; R.C.M. 1947, 91-4448.

72-16-208. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.36, R.C.M. 1935; amd. Sec. 97, Ch. 391, L. 1973; R.C.M. 1947, 91-4446; amd. Sec. 20, Ch. 6, L. 1979.

72-16-209. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: (1), (2)En. Sec. 20, Ch. 65, L. 1923; re-en. Sec. 10400.41, R.C.M. 1935; amd. Sec. 102, Ch. 391, L. 1973; Sec. 91-4451, R.C.M. 1947; (3)En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.37, R.C.M. 1935; amd. Sec. 98, Ch. 391, L. 1973; Sec. 91-4447, R.C.M. 1947; R.C.M. 1947, 91-4447(part), 91-4451.

72-16-210. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.37, R.C.M. 1935; amd. Sec. 98, Ch. 391, L. 1973; R.C.M. 1947, 91-4447(part); amd. Sec. 21, Ch. 6, L. 1979.

72-16-211. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.43, R.C.M. 1935; amd. Sec. 94, Ch. 391, L. 1973; R.C.M. 1947, 91-4443.

72-16-212. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.31, R.C.M. 1935; R.C.M. 1947, 91-4441(part).

72-16-213. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.32, R.C.M. 1935; amd. Sec. 93, Ch. 391, L. 1973; R.C.M. 1947, 91-4442.

72-16-214. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.31, R.C.M. 1935; R.C.M. 1947, 91-4441(part).

72-16-215. Renumbered 72-16-920. Code Commissioner, 2000.

72-16-216. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.39, R.C.M. 1935; amd. Sec. 100, Ch. 391, L. 1973; R.C.M. 1947, 91-4449.

72-16-217. Renumbered 50-15-409. Sec. 35, Ch. 9, Sp. L. May 2000.

72-16-218. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 3, Ch. 186, L. 1935; re-en. Sec. 10400.51, R.C.M. 1935; amd. Sec. 105, Ch. 391, L. 1973; R.C.M. 1947, 91-4459.

Part 3
Application and Imposition of Tax — Exemptions and Rates — Property Valuation
(Repealed)

72-16-301. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: Ap. p. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; Sec. 91-4401, R.C.M. 1947; (3)En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 269, L. 1955; Sec. 91-4402, R.C.M. 1947; R.C.M. 1947, 91-4401(part), 91-4402; amd. Sec. 25, Ch. 582, L. 1989; amd. Sec. 32, Ch. 592, L. 1995.

72-16-302. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4404; amd. Sec. 26, Ch. 582, L. 1989.

72-16-303. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1951; amd. Sec. 1, Ch. 490, L. 1977; R.C.M. 1947, 91-4405; amd. Sec. 1, Ch. 636, L. 1979; amd. Sec. 27, Ch. 582, L. 1989.

72-16-304. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4406; amd. Sec. 1, Ch. 253, L. 1997.

72-16-305. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 10, Ch. 65, L. 1923; re-en. Sec. 10400.10, R.C.M. 1935; R.C.M. 1947, 91-4420.

72-16-306. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4408; amd. Sec. 22, Ch. 6, L. 1979.

72-16-307. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4403(part).

72-16-308. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1957; amd. Sec. 1, Ch. 232, L. 1959; R.C.M. 1947, 91-4407; amd. Sec. 1, Ch. 573, L. 1979; amd. Sec. 43, Ch. 705, L. 1979; amd. Sec. 33, Ch. 592, L. 1995.

72-16-309 and 72-16-310 reserved.

72-16-311. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(1).

72-16-312. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: (1)En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; Sec. 91-4414, R.C.M. 1947; (2)En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; Sec. 91-4401, R.C.M. 1947; R.C.M. 1947, 91-4401(part), 91-4414(2); amd. Sec. 23, Ch. 6, L. 1979.

72-16-313. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(3), (4), (6); amd. Sec. 1, Ch. 696, L. 1979; amd. Sec. 1, Ch. 202, L. 1981; amd. Sec. 1, Ch. 223, L. 1991; amd. Sec. 81, Ch. 494, L. 1993; amd. Sec. 1, Ch. 464, L. 1997.

72-16-314. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. 91A-2-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-405.

72-16-315. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 147, L. 1969; amd. Sec. 76, Ch. 391, L. 1973; R.C.M. 1947, 91-4414.1.

72-16-316. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(7).

72-16-317. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 236, L. 1943; R.C.M. 1947, 91-4412.

72-16-318. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(5).

72-16-319. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 673, L. 1979.

72-16-320 reserved.

72-16-321. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 2, Ch. 65, L. 1923; amd. Sec. 1, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.2, R.C.M. 1935; amd. Sec. 2, Ch. 490, L. 1977; R.C.M. 1947, 91-4409; amd. Sec. 2, Ch. 696, L. 1979; amd. Sec. 2, Ch. 202, L. 1981.

72-16-322. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 3, Ch. 65, L. 1923; amd. Sec. 1, Ch. 141, L. 1927; amd. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3, R.C.M. 1935; amd. Sec. 3, Ch. 490, L. 1977; R.C.M. 1947, 91-4410.

72-16-323. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 288, L. 1997.

72-16-324 through 72-16-330 reserved.

72-16-331. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 705, L. 1979; amd. Sec. 185, Ch. 575, L. 1981; amd. Sec. 2, Ch. 511, L. 1983; amd. Sec. 260, Ch. 42, L. 1997.

72-16-332. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 9, Ch. 705, L. 1979; amd. Sec. 3, Ch. 511, L. 1983.

72-16-333. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 2, Ch. 705, L. 1979; amd. Sec. 4, Ch. 511, L. 1983.

72-16-334. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 3, Ch. 705, L. 1979; amd. Sec. 5, Ch. 511, L. 1983.

72-16-335. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 4, Ch. 705, L. 1979; amd. Sec. 6, Ch. 511, L. 1983.

72-16-336. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 5, Ch. 705, L. 1979.

72-16-337. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 11, Ch. 705, L. 1979; amd. Sec. 7, Ch. 511, L. 1983.

72-16-338. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 7, Ch. 705, L. 1979; amd. Sec. 8, Ch. 511, L. 1983.

72-16-339. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 8, Ch. 705, L. 1979; amd. Sec. 9, Ch. 511, L. 1983.

72-16-340. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 10, Ch. 705, L. 1979.

72-16-341. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 12, Ch. 705, L. 1979; amd. Sec. 10, Ch. 511, L. 1983.

72-16-342. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 6, Ch. 705, L. 1979; amd. Sec. 11, Ch. 511, L. 1983.

72-16-343. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 17, Ch. 511, L. 1983.

72-16-344. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 18, Ch. 511, L. 1983.

72-16-345. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 19, Ch. 511, L. 1983.

72-16-346. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 20, Ch. 511, L. 1983.

72-16-347. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 21, Ch. 511, L. 1983.

72-16-348. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 22, Ch. 511, L. 1983.

72-16-349. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 23, Ch. 511, L. 1983.

Part 4
Determination and Payment of Tax
(Repealed)

72-16-401. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-402. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-403. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-404 through 72-16-410 reserved.

72-16-411. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 13, Ch. 65, L. 1923; amd. Sec. 2, Ch. 141, L. 1927; re-en. Sec. 10400.17, R.C.M. 1935; amd. Sec. 84, Ch. 391, L. 1973; R.C.M. 1947, 91-4427.

72-16-412. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: (1), (2)En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; re-en. Sec. 10400.18, R.C.M. 1935; amd. Sec. 85, Ch. 391, L. 1973; Sec. 91-4428, R.C.M. 1947; (3)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.19, R.C.M. 1935; amd. Sec. 86, Ch. 391, L. 1973; Sec. 91-4429, R.C.M. 1947; R.C.M. 1947, 91-4428(part), 91-4429(part).

72-16-413. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; re-en. Sec. 10400.18, R.C.M. 1935; amd. Sec. 85, Ch. 391, L. 1973; R.C.M. 1947, 91-4428(part).

72-16-414. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.22, R.C.M. 1935; amd. Secs. 1 and 2, Ch. 101, L. 1947; R.C.M. 1947, 91-4432(part).

72-16-415. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.19, R.C.M. 1935; amd. Sec. 86, Ch. 391, L. 1973; R.C.M. 1947, 91-4429(part).

72-16-416. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.20, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1949; amd. Sec. 87, Ch. 391, L. 1973; amd. Sec. 7, Ch. 365, L. 1974; R.C.M. 1947, 91-4430.

72-16-417. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: (1)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.21, R.C.M. 1935; amd. Sec. 88, Ch. 391, L. 1973; Sec. 91-4431, R.C.M. 1947; (2), (3)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.22, R.C.M. 1935; amd. Secs. 1 and 2, Ch. 101, L. 1947; Sec. 91-4432, R.C.M. 1947; R.C.M. 1947, 91-4431, 91-4432(part).

72-16-418. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.23, R.C.M. 1935; R.C.M. 1947, 91-4433.

72-16-419. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.25, R.C.M. 1935; R.C.M. 1947, 91-4435.

72-16-420. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.26, R.C.M. 1935; R.C.M. 1947, 91-4436(part).

72-16-421. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.26, R.C.M. 1935; R.C.M. 1947, 91-4436(part).

72-16-422. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.27, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974; R.C.M. 1947, 91-4437(part).

72-16-423. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.27, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974; R.C.M. 1947, 91-4437(part); amd. Sec. 24, Ch. 6, L. 1979.

72-16-424. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.28, R.C.M. 1935; amd. Sec. 90, Ch. 391, L. 1973; amd. Sec. 9, Ch. 365, L. 1974; R.C.M. 1947, 91-4438.

72-16-425. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.29, R.C.M. 1935; amd. Sec. 91, Ch. 391, L. 1973; R.C.M. 1947, 91-4439.

72-16-426 through 72-16-430 reserved.

72-16-431. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part).

72-16-432. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: (1)En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516,L. 1975; Sec. 91A-3-1010, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; Sec. 91-4415, R.C.M. 1947; R.C.M. 1947, 91-4415(part), 91A-3-1010(part); amd. Sec. 2, Ch. 131, L. 1989.

72-16-433. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-1010(part).

72-16-434. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part).

72-16-435. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 21, Ch. 65, L. 1923; re-en. Sec. 10400.42, R.C.M. 1935; R.C.M. 1947, 91-4452.

72-16-436. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 7, Ch. 65, L. 1923; re-en. Sec. 10400.7, R.C.M. 1935; amd. Sec. 2, Ch. 99, L. 1965; amd. Sec. 5, Ch. 365, L. 1974; R.C.M. 1947, 91-4417.

72-16-437. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part); amd. Sec. 25, Ch. 6, L. 1979.

72-16-438. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 9, Ch. 65, L. 1923; re-en. Sec. 10400.9, R.C.M. 1935; amd. Sec. 79, Ch. 391, L. 1973; amd. Sec. 6, Ch. 490, L. 1977; R.C.M. 1947, 91-4419.

72-16-439. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; re-en. Sec. 10400.8, R.C.M. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975; R.C.M. 1947, 91-4418(part); amd. Sec. 1, Ch. 136, L. 1989.

72-16-440. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 6, Ch. 65, L. 1923; re-en. Sec. 10400.6, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977; R.C.M. 1947, 91-4416(1).

72-16-441. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 6, Ch. 65, L. 1923; re-en. Sec. 10400.6, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977; R.C.M. 1947, 91-4416(2).

72-16-442. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; re-en. Sec. 10400.8, R.C.M. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975; R.C.M. 1947, 91-4418(part).

72-16-443. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 16, Ch. 65, L. 1923; re-en. Sec. 10400.30, R.C.M. 1935; amd. Sec. 92, Ch. 391, L. 1973; R.C.M. 1947, 91-4440; amd. Sec. 26, Ch. 6, L. 1979.

72-16-444 reserved.

72-16-445. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 736, L. 1985.

72-16-446. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 2, Ch. 736, L. 1985.

72-16-447. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 3, Ch. 736, L. 1985; amd. Sec. 44, Ch. 19, L. 1999.

72-16-448. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 4, Ch. 736, L. 1985; amd. Sec. 45, Ch. 19, L. 1999.

72-16-449. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 5, Ch. 736, L. 1985.

72-16-450. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 6, Ch. 736, L. 1985; amd. Sec. 46, Ch. 19, L. 1999.

72-16-451. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 13, Ch. 705, L. 1979.

72-16-452. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 14, Ch. 705, L. 1979; amd. Sec. 12, Ch. 511, L. 1983.

72-16-453. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 15, Ch. 705, L. 1979; amd. Sec. 3, Ch. 288, L. 1997.

72-16-454. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 16, Ch. 705, L. 1979; amd. Sec. 135, Ch. 370, L. 1987.

72-16-455. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 17, Ch. 705, L. 1979; amd. Sec. 4, Ch. 288, L. 1997.

72-16-456. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 18, Ch. 705, L. 1979; amd. Sec. 13, Ch. 511, L. 1983.

72-16-457. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 19, Ch. 705, L. 1979.

72-16-458. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 20, Ch. 705, L. 1979.

72-16-459. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 24, Ch. 705, L. 1979.

72-16-460. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 25, Ch. 705, L. 1979.

72-16-461. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 27, Ch. 705, L. 1979.

72-16-462. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 21, Ch. 705, L. 1979.

72-16-463. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 23, Ch. 705, L. 1979; amd. Sec. 14, Ch. 511, L. 1983.

72-16-464. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 22, Ch. 705, L. 1979; amd. Sec. 15, Ch. 511, L. 1983.

72-16-465. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 26, Ch. 705, L. 1979.

72-16-466 through 72-16-470 reserved.

72-16-471. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 28, Ch. 705, L. 1979.

72-16-472. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 29, Ch. 705, L. 1979.

72-16-473. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 39, Ch. 705, L. 1979.

72-16-474. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 32, Ch. 705, L. 1979.

72-16-475. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 30, Ch. 705, L. 1979.

72-16-476. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 31, Ch. 705, L. 1979.

72-16-477. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 33, Ch. 705, L. 1979; amd. Sec. 3, Ch. 131, L. 1989.

72-16-478. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 34, Ch. 705, L. 1979; amd. Sec. 4, Ch. 131, L. 1989.

72-16-479. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 35, Ch. 705, L. 1979; amd. Sec. 261, Ch. 42, L. 1997.

72-16-480. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 36, Ch. 705, L. 1979.

72-16-481. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 38, Ch. 705, L. 1979.

72-16-482. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 37, Ch. 705, L. 1979.

72-16-483 through 72-16-490 reserved.

72-16-491. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 40, Ch. 705, L. 1979; amd. Sec. 24, Ch. 511, L. 1983.

72-16-492. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 41, Ch. 705, L. 1979.

72-16-493. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. Sec. 42, Ch. 705, L. 1979.

Part 5
Joint Tenancies and Life Estates Determination of Tax — Termination

72-16-501. Interest of decedent terminated upon death. The interest of the decedent in property held in joint tenancy terminates upon death.

History: En. 91-4471 by Sec. 2, Ch. 409, L. 1977; R.C.M. 1947, 91-4471(2); amd. Sec. 2472, Ch. 56, L. 2009.

Cross-References
Joint interest defined, 70-1-307.

72-16-502. Definition of decedent. For the purposes of this part, a decedent is one who dies leaving no property that requires the appointment of a personal representative and who:

(1) was the owner of a life estate that terminated at death; or

(2) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common.

History: En. 91-4470 by Sec. 1, Ch. 409, L. 1977; R.C.M. 1947, 91-4470; amd. Sec. 1, Ch. 391, L. 1995; amd. Sec. 1, Ch. 113, L. 1999; amd. Sec. 25, Ch. 9, Sp. L. May 2000.

72-16-503. Filings required when holder of nonprobate interest in real property has died. A person with an interest in real property that was owned by a decedent, as defined under 72-16-502, shall record with the clerk and recorder of each county in which the real property or any part of the property is located a document containing those matters required by 7-4-2613(1)(c).

History: En. 91-4471 by Sec. 2, Ch. 409, L. 1977; R.C.M. 1947, 91-4471(1), (3); amd. Sec. 2, Ch. 377, L. 1981; amd. Sec. 2, Ch. 391, L. 1995; amd. Sec. 2, Ch. 113, L. 1999; amd. Sec. 26, Ch. 9, Sp. L. May 2000; amd. Sec. 2, Ch. 37, L. 2001; amd. Sec. 2, Ch. 412, L. 2001.

72-16-504. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. 91-4472 by Sec. 3, Ch. 409, L. 1977; R.C.M. 1947, 91-4472.

72-16-505. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.
History: En. 91-4473 by Sec. 4, Ch. 409, L. 1977; R.C.M. 1947, 91-4473.

Part 6
Apportionment of Taxes

72-16-601. Definitions. For purposes of this part, the following definitions apply:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state.

(2) "Fiduciary" means personal representative or trustee.

(3) "Person" means any individual, partnership, association, joint-stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

(4) "Person interested in the estate" means any person entitled to receive or who has received from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) "Tax" means the federal estate tax and any additional inheritance, estate, or death taxes imposed by the laws of any state and interest and penalties imposed in addition to the tax.
History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(1).

72-16-602. Authority of court of administration to determine apportionment. The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.
History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(a).

72-16-603. Tax — how apportioned. (1) Except as provided in subsection (3) and unless the will or governing instrument otherwise provides, the tax must be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose.

(2) If the decedent's will or governing instrument directs a method of apportionment of tax different from the method described in this part, the method described in the will or governing instrument controls.

(3) If the liabilities of persons interested in the estate as described in this part differ from those that result under the federal estate tax law, the liabilities imposed by the federal law control and the balance of this part applies as if the resulting liabilities had been prescribed in this part.
History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(2); amd. Sec. 16, Ch. 511, L. 1983; amd. Sec. 6, Ch. 279, L. 1997.

72-16-604. Equitable power of court to vary manner of apportionment. If the court finds that it is inequitable to apportion interest and penalties in the manner provided in 72-16-603 because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.
History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(b).

72-16-605. Distribution prior to apportionment — bond required. If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.
History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(4)(b).

72-16-606. No apportionment as between temporary interest and remainder. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(6).

72-16-607. Allowance for exemptions, deductions, and credits. (1) In making an apportionment, allowances must be made for any exemptions granted, for any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing the relationship or receiving the gift, but if an interest is subject to a prior present interest that is not allowable as a deduction, the tax apportionable against the present interest must be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes of that nature applicable to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in 72-16-603 and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code, 26 U.S.C. 2053(d), as amended, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(5); amd. Sec. 120, Ch. 114, L. 2003.

72-16-608. Powers of personal representative in relation to satisfaction of tax liability. (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to the person, the amount of tax attributable to the person's interest.

(2) If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate.

(3) If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(4)(a); amd. Sec. 2473, Ch. 56, L. 2009.

72-16-609. Penalties and interest charged to fiduciary when caused by fiduciary's negligence. If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(c); amd. Sec. 2474, Ch. 56, L. 2009.

Cross-References

Liability for negligence, 27-1-701.

72-16-610. Action to recover apportioned tax — limitations on duty to initiate — uncollectibility. Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(7).

72-16-611. Action to recover apportioned tax — determination of court prima facie correct. In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part, the determination of the court in respect thereto made pursuant to 72-16-602 shall be prima facie correct.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(d).

72-16-612. Action by foreign representative to recover apportioned tax. A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(8).

Part 7
Estates With Multistate Aspects — Securities Transfer (Repealed)

72-16-701. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(1).

72-16-702. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(2).

72-16-703. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(part).

72-16-704. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(3); amd. Sec. 27, Ch. 6, L. 1979.

72-16-705. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(part).

72-16-706. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(5).

Part 8
Nonresident Decedents
(Repealed)

72-16-801. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 1, Ch. 3, L. 1945; R.C.M. 1947, 91-4413; amd. Sec. 28, Ch. 6, L. 1979.

72-16-802. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(part).

72-16-803. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(part).

72-16-804. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(3).

72-16-805. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.16, R.C.M. 1935; amd. Sec. 83, Ch. 391, L. 1973; R.C.M. 1947, 91-4426.

Part 9
Estate Tax

72-16-901. Purpose — liberal construction to effect. It is hereby declared to be the intent and purpose of this part to obtain for this state the benefit of the credit allowed under the provisions of the Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes, and the same shall be liberally construed to effect this purpose.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(g).

72-16-902. Repealed. Sec. 36, Ch. 9, Sp. L. May 2000.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(h).

72-16-903. Taxable situs of property. For the purpose of the estate tax, the following have taxable situs in this state:

(1) real property located in this state;

(2) tangible personal property located in this state; and

(3) intangible personal property owned by a resident regardless of where it is located.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 27, Ch. 9, Sp. L. May 2000.

72-16-904. Estate tax imposed. An estate tax is imposed upon the transfer of the estate of every decedent leaving an estate that is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and that has, in whole or in part, a taxable situs in this state.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 28, Ch. 9, Sp. L. May 2000.

72-16-905. Estate tax — how computed. The tax imposed upon the transfer of each estate is equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state. It is the purpose and intent of this part to impose only those additional taxes that may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate that has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, the maximum tax credit must be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage that the value of the portion of the decedent's estate that has a taxable situs in this state bears to the value of the entire estate.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 29, Ch. 9, Sp. L. May 2000.**

72-16-906. Required filing of United States estate tax return. The personal representative or domiciliary foreign personal representative of the estate of any decedent who died prior to January 1, 2005, and whose estate is required to file a United States estate tax return shall file a duplicate of the United States estate tax return with the department of revenue.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 29, Ch. 6, L. 1979; amd. Sec. 28, Ch. 582, L. 1989; amd. Sec. 6, Ch. 68, L. 2003; amd. Sec. 4, Ch. 513, L. 2005.**

72-16-907. Department to determine tax — rehearing and appeal — rulemaking. (1) (a) The department of revenue shall enter an order determining the state estate tax and the amount due and payable.

(b) Any person with an interest aggrieved by the department's determination may appeal the determination to district court.

(2) The department shall adopt rules necessary for the administration and enforcement of this part.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 30, Ch. 9, Sp. L. May 2000.**

72-16-908. Persons liable for tax. Administrators, executors, trustees, and grantees under a conveyance made during the grantor's life and taxable hereunder shall be liable for such taxes with interest until the same have been paid.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(c).**

72-16-909. When and where tax payable — interest. (1) The estate tax is payable to the department of revenue.

(2) If the tax is not paid within 18 months of the death of the decedent, interest must be charged and collected at the rate of 10% a year from the time that the tax accrued, unless because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the tax is not determined and paid on time. Interest at the rate of 6% must be charged upon the amount of tax due from the time of accrual until the cause of the delay is removed, and after that time, interest at the rate of 10% must be charged.

(3) Litigation to defeat the payment of the tax is not necessary litigation.

(4) When permission has been granted to defer payment of tax under 72-16-910, interest must be charged at the rate of 6% after 1 year from the date of death until the date of payment.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(b); amd. Sec. 1, Ch. 166, L. 1979; amd. Sec. 31, Ch. 9, Sp. L. May 2000; amd. Sec. 186, Ch. 574, L. 2001.**

72-16-910. Extension of time for payment. The district court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(e).**

72-16-911. Tax lien. Said taxes and interest shall be and remain a lien on the property for a period of 10 years from the date of death, unless sooner paid.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(d).**

Cross-References

Federal tax liens, Title 71, ch. 3, part 2.

72-16-912. Collection and deposit of tax. The tax imposed by this part must be collected by the department of revenue for deposit with the state treasurer.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 187, Ch. 574, L. 2001.**

72-16-913 through 72-16-919 reserved.

72-16-920. Repealed. Sec. 7, Ch. 68, L. 2003.

History: En. Sec. 19, Ch. 65, L. 1923; amd. Sec. 7, Ch. 150, L. 1925; re-en. Sec. 10400.40, R.C.M. 1935; amd. Sec. 2, Ch. 36, L. 1971; amd. Sec. 101, Ch. 391, L. 1973; R.C.M. 1947, 91-4450; amd. Sec. 3, Ch. 361, L. 1987; amd. Sec. 24, Ch. 9, Sp. L. May 2000; Sec. 72-16-215, MCA 2000; redes. 72-16-920 by Code Commissioner, 2000; amd. Sec. 37, Ch. 257, L. 2001.

Part 10
Generation-Skipping Transfer Tax

72-16-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Direct skip" has the meaning given in section 2612(c), Internal Revenue Code.

(3) "Federal generation-skipping transfer tax" means the tax imposed by section 2601, Internal Revenue Code.

(4) "Generation-skipping transfer" means the generation-skipping transfer defined in section 2611, Internal Revenue Code, when the original transferor is a resident of Montana on the date of the original transfer or when the property is real or personal property located in Montana.

(5) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(6) "Original transferor" means any grantor, donor, settlor, or testator who by grant, gift, trust, or will makes a transfer of real or personal property that results in a federal generation-skipping transfer tax.

History: En. Sec. 1, Ch. 273, L. 1991; amd. Sec. 152, Ch. 264, L. 2013.

72-16-1002. Imposition of tax. (1) A tax is imposed on each generation-skipping transfer, other than a direct skip, occurring at the same time and as a result of the death of an individual, in an amount equal to the maximum federal credit allowable under section 2604, Internal Revenue Code.

(2) If any of the property transferred is real property in another state or personal property located in another state that requires the payment of a tax for which credit is received against the federal generation-skipping transfer tax, the tax due under subsection (1) must be reduced by an amount that bears the same ratio to the total state tax credit allowable for federal generation-skipping transfer tax purposes as the value of the property taxable in the other state bears to the value of the gross generation-skipping transfer for federal generation-skipping transfer tax purposes.

History: En. Sec. 2, Ch. 273, L. 1991.

72-16-1003. Returns — payment. (1) A person required to file a return reporting a generation-skipping transfer under federal law shall file a duplicate of the federal return with the department and shall file any other information as the department may require. The return must be filed on or before the last day allowed for filing the federal return. A copy of amended or supplemental federal returns must be submitted to the department at the time it is filed with the internal revenue service.

(2) The tax imposed by 72-16-1002 must be paid on or before the deadline for filing the return. The tax must be paid to the department and deposited in the general fund.

History: En. Sec. 3, Ch. 273, L. 1991.

72-16-1004. Liability for tax — interest on delinquent tax. The person liable for payment of the federal generation-skipping transfer tax is liable for the tax imposed under 72-16-1002. If the tax imposed by 72-16-1002 is not paid within the time established in 72-16-1003, the tax is delinquent and draws interest at the rate of 10% a year.

History: En. Sec. 4, Ch. 273, L. 1991.

72-16-1005. Tax lien. The tax imposed by 72-16-1002 is a lien on the property subject to the tax for a period of 10 years from the time of the generation-skipping transfer. The payment of the tax and any interest due releases the lien and discharges the liability for payment of the tax. If the lien is not perfected by recording, a transfer for value to a bona fide purchaser divests the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgages, purchasers, or judgment creditors. The department may release the lien prior to the payment of the tax if adequate security for payment of the tax is given to the department.

History: En. Sec. 5, Ch. 273, L. 1991.

Cross-References

Federal tax liens, Title 71, ch. 3, part 2.

72-16-1006. Duty to claim maximum credit. A person liable for payment of the tax imposed under 72-16-1002 shall claim the maximum federal credit allowable for the portion of the state generation-skipping transfer tax paid with respect to property included in a taxable generation-skipping transfer. A person claiming less than the maximum federal credit allowable is liable for the full amount of the tax imposed under 72-16-1002.

History: En. Sec. 6, Ch. 273, L. 1991.

72-16-1007. Rulemaking. The department shall adopt rules necessary for the administration and enforcement of this part.

History: En. Sec. 7, Ch. 273, L. 1991; amd. Sec. 32, Ch. 9, Sp. L. May 2000.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

CHAPTER 17

ANATOMICAL GIFT ACT

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Organ procurement program required, 50-5-212.

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

Indication on driver's license of intent to make anatomical gift, 61-5-301.

Part 1
General Provisions

72-17-101. Short title. This chapter may be cited as the "Revised Uniform Anatomical Gift Act".

History: En. Sec. 9, Ch. 340, L. 1969; R.C.M. 1947, 69-2323; amd. Sec. 4, Ch. 345, L. 2007.

72-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Agent" means an individual:

(a) authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(b) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death for the purposes of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift and includes a stillborn infant or fetus.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) (a) "Disinterested witness" means a witness other than:

(i) the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift; or

(ii) another adult who exhibited special care and concern for the individual.

(b) The term does not include a person to which an anatomical gift could pass under 72-17-202.

(7) "Document of gift" means any of the following methods used to make an anatomical gift:

(a) a card;

(b) a statement attached to or imprinted on a driver's license, identification card, or donor registry;

(c) a will or other writing; or

(d) a witnessed oral statement.

(8) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(9) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(10) "Driver's license" means a license or permit issued by any state or federal authority to operate a vehicle, whether or not conditions are attached to the license or permit.

(11) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(12) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(13) (a) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, and welfare of an individual.

(b) The term does not include a guardian ad litem.

(14) "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(15) (a) "Human fetal tissue" means tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion or after a stillbirth.

(b) The term does not include established human fetal cell lines.

(16) "Identification card" means an identification card issued by the department of justice.

(17) "Know" means to have actual knowledge.

(18) "Minor" means an individual who is under 18 years of age.

(19) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(20) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(21) "Parent" means a parent whose parental rights have not been terminated.

(22) (a) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body. The term includes human fetal tissue.

(b) The term does not include the whole body.

(23) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, limited liability company, public corporation, instrumentality, or any other legal or commercial entity.

(24) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(25) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(26) (a) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education.

(b) The term does not include an individual who has made a refusal of an anatomical gift.

(27) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(28) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(29) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(30) "Refusal" means a record created under 72-17-201 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(31) "Sign" means, with the present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(32) "State" means a state, territory, or possession of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(33) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part.

(34) "Tissue" means a portion of the human body other than an organ, an eye, or blood unless the blood is donated for the purpose of research or education.

(35) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(36) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

History: En. Sec. 1, Ch. 340, L. 1969; R.C.M. 1947, 69-2315; amd. Sec. 1, Ch. 403, L. 1983; amd. Sec. 3, Ch. 540, L. 1989; amd. Sec. 176, Ch. 418, L. 1995; amd. Sec. 522, Ch. 546, L. 1995; amd. Sec. 5, Ch. 345, L. 2007; amd. Sec. 1, Ch. 361, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 361, L. 2025. Amendment effective May 5, 2025.

Cross-References

Ophthalmologist and physician licensure, Title 37, ch. 3.

72-17-103. Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 8, Ch. 340, L. 1969; R.C.M. 1947, 69-2322.

72-17-104. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 7, Ch. 340, L. 1969; R.C.M. 1947, 69-2321(c).

72-17-105. Legislative findings. (1) The legislature finds that the use of anatomical gifts, including the donation of organs or tissue, for the purpose of transplantation is of great interest to the citizens of Montana and may save or prolong the life or improve the health of extremely ill and dying persons. The creation of a statewide organ and tissue donation registry is crucial to facilitate timely and successful organ and tissue procurement.

(2) The legislature further finds that continuing education of the existence and maintenance of a statewide organ and tissue donation registry is in the best interest of the people of Montana.

History: En. Sec. 1, Ch. 230, L. 2003.

72-17-106. Statewide organ and tissue donation registry. (1) The department of justice shall electronically transfer to the federally designated organ procurement organization all information that appears on the front of a driver's license, including the name, gender, date of birth, and most recent address of any person who obtains a driver's license and who volunteers to donate organs or tissue upon death, as provided in 61-5-301. The department of justice may charge actual costs for the first transfer of information, as provided in subsection (5). However, all subsequent electronic transfers of donor information must be at no charge to the federally designated organ procurement organization.

(2) Information obtained by the federally designated organ procurement organization must be used for the purpose of establishing a statewide organ and tissue donation registry accessible to in-state, recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Montana resident is a donor of an anatomical gift and is not located in the state at the time of death or immediately before the death of the donor.

(3) An organ or tissue donation organization may not obtain information from the organ and tissue donation registry for the purpose of fundraising. Organ and tissue donation registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donation registry information may be made by the organ procurement organization to a recognized, in-state procurement agency for other tissue recovery or to an out-of-state, federally designated organ procurement organization.

(4) The federally designated organ procurement organization may acquire donor information from sources other than the department of justice.

(5) All reasonable costs associated with the creation and maintenance of the organ and tissue donation registry, as determined by the department of justice, must be paid by the organ and tissue procurement organizations. Any money collected by the department of justice must be deposited in an account in the state special revenue fund established by the department of justice for the purpose of the payment of reasonable costs associated with the development and maintenance of the organ and tissue donation registry and necessary for the initial installation and setup for electronic transfer of the donor information.

(6) An individual does not need to participate in the organ and tissue donation registry to be a donor of organs or tissue. The registry is intended to facilitate organ and tissue donation and not inhibit persons from being donors upon death.

History: En. Sec. 2, Ch. 230, L. 2003.

72-17-107 reserved.

72-17-108. Coordination of procurement and use. Each hospital in this state shall establish agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

History: En. Sec. 14, Ch. 540, L. 1989; amd. Sec. 6, Ch. 345, L. 2007.

Cross-References

Organ procurement program required, 50-5-212.

72-17-109. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: En. Sec. 18, Ch. 345, L. 2007.

Part 2
Execution and Operation of Anatomical Gift

72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by individual. (1) An anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in this section by:

(a) the donor if the donor is an adult or if the donor is a minor and is:

(i) emancipated; or

(ii) authorized under state law to apply for a driver's license because the donor is at least 15 years of age;

(b) an agent of the donor unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(c) a parent of the donor if the donor is an unemancipated minor; or

(d) the donor's guardian.

(2) A donor may make an anatomical gift:

(a) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(b) by a statement contained in a will;

(c) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) as provided in subsection (3).

(3) A donor or other person authorized to make an anatomical gift under subsection (1) may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign the record, the record may be signed by another individual at the direction of the donor or the other person and must:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person; and

(b) state that it has been signed and witnessed as provided in subsection (3)(a).

(4) Revocation, suspension, expiration, or cancellation of a driver's license or identification card issued to a donor does not invalidate the anatomical gift.

(5) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(6) An anatomical gift by will takes effect upon the donor's death, whether or not the will is probated. If, after the donor's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected. An anatomical gift made in accordance with this section is sufficient legal authority for procurement without additional authority from the donor or the donor's family or estate.

(7) Except as provided in subsection (17) and subject to subsection (14), a donor or other person authorized to make an anatomical gift under subsection (1) may amend or revoke an anatomical gift only by:

(a) a record signed by:

(i) the donor or the other person; or

(ii) subject to subsection (8), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign;

(b) any form of communication during a terminal illness or injury addressed to at least two adults, one of whom is a disinterested witness;

(c) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered;

(d) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency; or

(e) destroying or canceling the document of gift or portion of the document of gift used to make the anatomical gift with the intent to revoke the anatomical gift.

(8) A record signed pursuant to subsection (7)(a)(ii) must:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) state that it has been signed and witnessed as provided in subsection (8)(a).

(9) A donor shall notify the federally designated organ procurement organization of the destruction, cancellation, or mutilation of the document for the purpose of removing the person's name from the organ and tissue donation registry created in 72-17-105 and 72-17-106.

(10) The donor of an anatomical gift made by will may amend or revoke the anatomical gift in the manner provided for amendment or revocation of wills or as provided in subsection (7).

(11) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's driver's license or identification card;

(iii) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(iv) any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication addressed to at least two adults, at least one of whom is a disinterested witness.

(12) An individual who has made a refusal may amend or revoke a refusal:

(a) in the manner provided in subsection (11) for making a refusal;

(b) by subsequently making an anatomical gift pursuant to subsection (2) or (3) that is inconsistent with the refusal; or

(c) by destroying or canceling the record evidencing the refusal or the portion of the record used to make the refusal with the intent to revoke the refusal.

(13) Except as otherwise provided in subsection (17) and subject to subsection (15), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under subsection (2) or (3) or an amendment to an anatomical gift under subsection (7). The donor's family or health care provider may not refuse to honor the anatomical gift or thwart the procurement of the donation.

(14) Except as otherwise provided in subsection (18), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or a part bars all other persons from making an anatomical gift of the individual's body or a part.

(15) In the absence of an express, contrary indication by the donor or other person authorized under this section to make an anatomical gift, an anatomical gift of a part for one or more of the purposes set forth in subsection (1) is neither a refusal to give other parts nor a limitation on an anatomical gift under 72-17-214 or on a removal or release of other parts under 72-17-215.

(16) In the absence of contrary indications by the donor, a donor's revocation or amendment of an anatomical gift of the donor's body or part is not a refusal to make another anatomical gift and does not bar another person specified in 72-17-214 or this section from making an anatomical gift of the donor's body or part. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (11).

(17) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(18) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

History: **En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(a) thru (c); amd. Sec. 4, Ch. 540, L. 1989; amd. Sec. 4, Ch. 230, L. 2003; amd. Sec. 7, Ch. 345, L. 2007.**

Cross-References

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-202. Persons who may become donees — purposes for which anatomical gifts may be made. (1) The following persons may become donees of anatomical gifts for the purposes stated if named in the document of gift:

(a) a hospital, surgeon, physician, or procurement organization, an accredited medical school, dental school, college, or university, another appropriate person for education or research, a search and rescue unit established or recognized by a county as provided in 7-32-235, or persons certified by a state or local law enforcement agency to train search and rescue canines;

(b) subject to subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(c) an eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) cannot be transplanted into the individual, the part passes in accordance with subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate organ procurement organization.

(e) If the part is for the purpose of training a search and rescue canine as allowed in 7-32-235(4), the gift passes to the search and rescue unit established or recognized by the county in which the gift was made. A county coroner or sheriff may transfer the gift to an established or recognized canine search and rescue unit in another county or to a person certified by a state or local law enforcement agency to train search and rescue canines if the county in which the gift was made has not established or recognized a search and rescue unit.

(4) For the purpose of subsection (3), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the anatomical gift must be used for transplantation or therapy, if suitable. If the anatomical gift cannot be used for transplantation or therapy, the gift may be used for:

(a) research or education; or

(b) the training of search and rescue canines.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy and the gift passes in accordance with subsection (7).

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor" or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy and the gift passes in accordance with subsection (7).

(7) For purposes of subsections (2), (5), and (6), the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b), passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) or the decedent's body or part is not used for transplantation, therapy, research, education, or training search and rescue canines, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under 72-17-214, the donee may not accept the anatomical gift. For the purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the anatomical gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b), nothing in this section affects the allocation of organs for transplantation or therapy.

History: En. Sec. 3, Ch. 340, L. 1969; R.C.M. 1947, 69-2317; amd. Sec. 2, Ch. 403, L. 1983; amd. Sec. 5, Ch. 540, L. 1989; amd. Sec. 8, Ch. 345, L. 2007; amd. Sec. 4, Ch. 415, L. 2021.

72-17-203. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(e).

72-17-204. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(a), (b), (e); amd. Sec. 1, Ch. 459, L. 1985; amd. Sec. 38, Ch. 443, L. 1987.

72-17-205. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(c).

72-17-206. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(d); amd. Sec. 136, Ch. 370, L. 1987.

72-17-207. Examination — autopsy — liability. (1) An anatomical gift authorizes any reasonable examination necessary to ensure medical acceptability of the gift for the purposes intended. Unless prohibited by law other than this chapter, an examination may include an examination of all medical and dental records of the donor or prospective donor.

(2) Except as provided in 72-17-217 and 72-17-218, the provisions of this chapter are subject to the laws of this state governing autopsies.

(3) A hospital, physician, surgeon, coroner, enucleator, technician, nurse, or other person who acts in accordance with this chapter or with the applicable anatomical gift act of another state or attempts in good faith to do so is not liable for that act in a civil action, criminal proceeding, or administrative proceeding.

(4) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in 72-17-214(1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), or (1)(h) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

(5) An individual who makes an anatomical gift pursuant to 72-17-201 or 72-17-214 and the individual's estate are not liable for any injury or damage that may result from the making or use of the anatomical gift.

History: En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(d); amd. Sec. 6, Ch. 540, L. 1989; amd. Sec. 9, Ch. 345, L. 2007.

72-17-208. Document of gift — delivery — validity. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. A document of gift or a refusal to make an anatomical gift or a copy may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift or the refusal to make an anatomical gift.

(3) A document of gift is valid if executed in accordance with:

(a) this chapter;

(b) the laws of the state or country where it was executed; or

(c) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(4) If a document of gift is valid under this section, the laws of this state govern the interpretation of the document of gift.

(5) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

History: **En. Sec. 5, Ch. 340, L. 1969; R.C.M. 1947, 69-2319; amd. Sec. 7, Ch. 540, L. 1989; amd. Sec. 10, Ch. 345, L. 2007.**

Cross-References

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-209. Repealed. Sec. 19, Ch. 540, L. 1989.

History: **En. Sec. 6, Ch. 340, L. 1969; R.C.M. 1947, 69-2320.**

72-17-210. Renumbered 72-17-301. Code Commissioner, 1983.

72-17-211. Repealed. Sec. 19, Ch. 540, L. 1989.

History: **En. Sec. 1, Ch. 219, L. 1987.**

72-17-212. Repealed. Sec. 19, Ch. 540, L. 1989.

History: **En. Sec. 2, Ch. 219, L. 1987.**

72-17-213. Routine inquiry and required request — search and notification. (1) At or near the time of death of a hospitalized patient, the hospital administrator or a representative designated by the administrator shall notify the appropriate procurement organization and, if the reason for death falls under 46-4-122, the coroner with jurisdiction of the imminent or actual death of the patient and, in collaboration with the procurement organization, shall ensure that a trained designated requester is readily available to discuss donation opportunities with a person authorized under 72-17-214 to make an anatomical gift. The person designated must be a representative of a procurement organization or a person who has had training provided by or approved by a procurement organization.

(2) When a hospital refers an individual at or near death to a procurement organization, the organization:

(a) shall make a reasonable search of the records of the department of justice and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift;

(b) must be allowed reasonable access to information in the records of the department of justice to ascertain whether an individual at or near death is a donor; and

(c) may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(3) A hospital, as soon as practical after the arrival of an individual reasonably believed to be dead or near death, shall make a reasonable search of the individual for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift if there is not immediately available any other source of that information.

(4) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (3) and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(5) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to 72-17-214(1) or a release and removal of a part has been permitted pursuant to 72-17-215 or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(6) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but may be subject to appropriate administrative sanctions.

(7) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(8) Upon referral by a hospital under subsection (2), a procurement organization shall make a reasonable search for any person listed in 72-17-214 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

History: En. Sec. 13, Ch. 540, L. 1989; amd. Sec. 262, Ch. 42, L. 1997; amd. Sec. 11, Ch. 345, L. 2007.

Cross-References

Organ procurement program required, 50-5-212.

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-214. Making, revoking, and objecting to anatomical gifts by others. (1) Subject to subsections (2) and (3), any member of the following classes of persons who is reasonably available, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for a purpose authorized in 72-17-201(1) unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift as provided for in 72-17-201:

(a) an agent of the decedent at the time of death who could have made an anatomical gift under 72-17-201 immediately before the decedent's death;
(b) the spouse of the decedent;
(c) an adult son or daughter of the decedent;
(d) either parent of the decedent;
(e) an adult brother or sister of the decedent;
(f) adult grandchildren of the decedent;
(g) a grandparent of the decedent;
(h) a guardian of the person of the decedent at the time of death; and
(i) any other person having the authority to dispose of the decedent's body.

(2) If there is more than one member of a class listed in subsection (1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), or (1)(i) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift can pass under 72-17-202 knows of an objection by another member of the class. If an objection is known, the anatomical gift may be made only by a majority of the members of the class who are reasonably available.

(3) An anatomical gift may not be made by a person listed in subsection (1) if:
(a) a person in a prior class is reasonably available at the time of death to make or to object to the making of an anatomical gift; or
(b) the person proposing to make an anatomical gift knows of a refusal by the decedent.

(4) An anatomical gift by a person authorized under subsection (1) must be made by:
(a) a document of gift signed by the person; or
(b) the person's telegraphic, recorded telephonic, other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(5) Subject to subsection (6), an anatomical gift by a person authorized under subsection (1) may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift may be:
(a) amended only if a majority of the reasonably available members agree to the amending of the gift; or
(b) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(6) A revocation made under subsection (5) is effective only if, before an incision has been made for the removal of a part from the body of the decedent or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(7) A failure to make an anatomical gift under subsection (1) is not an objection to the making of an anatomical gift.

History: En. Sec. 11, Ch. 540, L. 1989; amd. Sec. 12, Ch. 345, L. 2007.

72-17-215. Authorization by coroner or local public health official. (1) The coroner may release and permit the removal of a part from a body within that official's custody, for transplantation or therapy, if:

(a) the official has received a request for the part from a hospital, physician, surgeon, or procurement organization;

(b) the official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in 72-17-214(1) of their option to make, or object to making, an anatomical gift;

(c) the official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in 72-17-214(1);

(d) the removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;

(e) the removal will not interfere with any autopsy or investigation;

(f) the removal will be in accordance with accepted standards; and

(g) cosmetic restoration will be done, if appropriate.

(2) If the body is not within the custody of the coroner, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation or therapy if the requirements of subsection (1) are met.

(3) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

History: En. Sec. 12, Ch. 540, L. 1989.

Cross-References

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

72-17-216. Anatomical gifts — advance health care directive. (1) For the purposes of this section, the following definitions apply:

(a) "Advance health care directive" means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision made regarding the health care of the prospective donor.

(2) If a prospective donor who is in a health care facility has a declaration or advance health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor unless the declaration expressly provides to the contrary.

History: En. Sec. 13, Ch. 345, L. 2007.

72-17-217. Cooperation between coroner, medical examiner, county attorney, and procurement organization. (1) A county coroner, medical examiner, or associate medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(2) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of a coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or medical examiner.

History: En. Sec. 14, Ch. 345, L. 2007.

72-17-218. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner, medical examiner, or county attorney. (1) Upon request of a procurement organization, a county coroner, medical examiner, or associate medical examiner shall release to the procurement organization the name, contact information, and available medical history of a decedent whose body is under the jurisdiction of the coroner or medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the coroner or medical examiner only if relevant to transplantation or therapy.

(2) For the purpose of expediting an anatomical gift, the coroner or medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the coroner's or medical examiner's jurisdiction and that the coroner or medical examiner determines may be relevant to the investigation.

(3) A person that has any information requested by a coroner or medical examiner pursuant to subsection (2) shall provide that information as expeditiously as possible to allow the coroner or medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(4) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of a coroner or medical examiner and a postmortem examination is not required or if the coroner or medical examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner or medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(5) If an anatomical gift of a part from the decedent under the jurisdiction of a coroner, medical examiner, or county attorney has been or might be made but the coroner, medical examiner, or county attorney initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the coroner, medical examiner, or county attorney may consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner, medical examiner, or county attorney may allow the recovery.

(6) If the coroner, medical examiner, county attorney, or designee denies recovery, the person denying recovery shall:

(a) explain in a record the specific reasons for not allowing recovery of the part;

(b) include the specific reasons in the records of the coroner or medical examiner; and

(c) provide a record with the specific reasons to the procurement organization.

(7) If a coroner, medical examiner, county attorney, or designee allows recovery of a part under subsection (4) or (5), the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the requester with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.

History: En. Sec. 15, Ch. 345, L. 2007.

Part 3
Regulation — Qualifications

72-17-301. Rights and duties at death. (1) Subject to 72-17-202 and 72-17-218, the rights of a donee created by an anatomical gift are superior to rights of others under 72-17-214(1), except with respect to autopsies. A donee may accept or reject an anatomical gift. If the donee accepts an anatomical gift of the entire body, the donee, subject to the terms of the gift and this chapter, may allow embalming, burial, or cremation and the use of the body in funeral services. If the anatomical gift is of a part of the body, the donee, upon the death of the donor and before embalming, burial, or cremation shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician, surgeon, or coroner who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician, surgeon, or coroner who

determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201(5).

(3) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under 72-17-202 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(4) Unless prohibited by law other than this chapter, an examination under 72-17-213(2)(c) or subsection (3) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(5) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(6) Upon referral by a hospital under 72-17-213(2), a procurement organization shall make a reasonable search for any person listed in 72-17-214 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(7) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon.

History: En. Sec. 7, Ch. 340, L. 1969; R.C.M. 1947, 69-2321(a), (b); MCA 1981, 72-17-210; redes. 72-17-301 by Code Commissioner, 1983; amd. Sec. 8, Ch. 540, L. 1989; amd. Sec. 16, Ch. 345, L. 2007.

Cross-References

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

72-17-302. Sale or purchase of parts and whole bodies prohibited. (1) A person may not knowingly, for valuable consideration:

(a) purchase or sell a part for:

(i) transplantation or therapy, if removal of the part is intended to occur after the death of the decedent; or

(ii) research, education, or the training of search and rescue canines; or

(b) purchase or sell a whole body for transplantation, therapy, research, education, or the training of search and rescue canines.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, or transportation of a part or a whole body, or for the implantation of a part.

(3) A person who violates this section is guilty of a felony and on conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 5 years, or both.

History: En. Sec. 15, Ch. 540, L. 1989; amd. Sec. 2, Ch. 361, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 361, L. 2025. Amendment effective May 5, 2025.

72-17-303. False acts concerning document of gift — penalty. Any person that knowingly falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal in order to obtain a financial gain commits a felony and upon conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 5 years, or both.

History: En. Sec. 17, Ch. 345, L. 2007.

72-17-304 through 72-17-310 reserved.

72-17-311. Eye enucleations — enucleators — qualifications. (1) Eye enucleations for purposes of anatomical gifts may be performed:

(a) by a licensed physician or surgeon; or

(b) by an enucleator trained in eye enucleation.

(2) An acceptable course in eye enucleation must include the anatomy and physiology of the eye, instruction in maintaining a sterile field during the enucleation procedure, and use of appropriate instruments and sterile procedures for removal and preservation of corneal tissue.

(3) Certification of satisfactory completion of a course in eye enucleation must be provided by the ophthalmologist who teaches the course. This certification qualifies an enucleator to perform eye enucleations for a period of 3 years from the date of completion of the course.

History: **En. Sec. 3, Ch. 403, L. 1983; amd. Sec. 137, Ch. 370, L. 1987; amd. Sec. 9, Ch. 540, L. 1989.**

72-17-312. Approval of eye banks. Any bank or storage facility that furnishes to the department written evidence of its membership and certification and reports and recommendations for future compliance, granted by the eyebank association of America, is approved for receipt and storage of eye tissue for the term of such membership and certification and is eligible during such term to be a donee of eye tissue pursuant to 72-17-202.

History: **En. Sec. 4, Ch. 403, L. 1983; amd. Sec. 10, Ch. 540, L. 1989.**

CHAPTERS 18 AND 19
RESERVED

CHAPTER 20
TRUSTS IN GENERAL
(Repealed)

Part 1 — Nature and Creation (Repealed)

Part 2 — Obligations of Trustee (Repealed)

Part 3 — Rights and Duties of Third Persons (Repealed)

Part 4 — Trustee Accounts (Repealed)

Part 5 — Transfer of Interest in Trust (Repealed)

Part 1
Nature and Creation
(Repealed)

72-20-101. Repealed. Sec. 220, Ch. 685, L. 1989.

History: **En. Sec. 2950, Civ. C. 1895; re-en. Sec. 5364, Rev. C. 1907; re-en. Sec. 7878, R.C.M. 1921; Cal. Civ. C. Sec. 2215; Field Civ. C. Sec. 1167; re-en. Sec. 7878, R.C.M. 1935; R.C.M. 1947, 86-201.**

72-20-102. Repealed. Sec. 220, Ch. 685, L. 1989.

History: **En. Sec. 2951, Civ. C. 1895; re-en. Sec. 5365, Rev. C. 1907; re-en. Sec. 7879, R.C.M. 1921; Cal. Civ. C. Sec. 2216; Field Civ. C. Sec. 1168; re-en. Sec. 7879, R.C.M. 1935; R.C.M. 1947, 86-202.**

72-20-103. Repealed. Sec. 220, Ch. 685, L. 1989.

History: **En. Sec. 2952, Civ. C. 1895; re-en. Sec. 5366, Rev. C. 1907; re-en. Sec. 7880, R.C.M. 1921; Cal. Civ. C. Sec. 2217; Field Civ. C. Sec. 1169; re-en. Sec. 7880, R.C.M. 1935; R.C.M. 1947, 86-203.**

72-20-104. Repealed. Sec. 220, Ch. 685, L. 1989.

History: **En. Sec. 2953, Civ. C. 1895; re-en. Sec. 5367, Rev. C. 1907; re-en. Sec. 7881, R.C.M. 1921; Cal. Civ. C. Sec. 2218; Field Civ. C. Sec. 1170; re-en. Sec. 7881, R.C.M. 1935; R.C.M. 1947, 86-204.**

72-20-105. Repealed. Sec. 220, Ch. 685, L. 1989.

History: **En. Sec. 2954, Civ. C. 1895; re-en. Sec. 5368, Rev. C. 1907; re-en. Sec. 7882, R.C.M. 1921; Cal. Civ. C. Sec. 2219; Field Civ. C. Sec. 1171; re-en. Sec. 7882, R.C.M. 1935; R.C.M. 1947, 86-205.**

72-20-106. Repealed. Sec. 220, Ch. 685, L. 1989.

History: **En. Sec. 2955, Civ. C. 1895; re-en. Sec. 5369, Rev. C. 1907; re-en. Sec. 7883, R.C.M. 1921; Cal. Civ. C. Sec. 2220; Field Civ. C. Sec. 1172; re-en. Sec. 7883, R.C.M. 1935; R.C.M. 1947, 86-206.**

72-20-107. Repealed. Sec. 220, Ch. 685, L. 1989.

History: **En. Sec. 2956, Civ. C. 1895; re-en. Sec. 5370, Rev. C. 1907; re-en. Sec. 7884, R.C.M. 1921; Cal. Civ. C. Sec. 2221; Field Civ. C. Sec. 1173; re-en. Sec. 7884, R.C.M. 1935; R.C.M. 1947, 86-207.**

72-20-108. Repealed. Sec. 220, Ch. 685, L. 1989.

History: **En. Sec. 2957, Civ. C. 1895; re-en. Sec. 5371, Rev. C. 1907; re-en. Sec. 7885, R.C.M. 1921; Cal. Civ. C. Sec. 2222; Field Civ. C. Sec. 1174; re-en. Sec. 7885, R.C.M. 1935; R.C.M. 1947, 86-208.**

72-20-109. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1, Ch. 218, L. 1921; re-en. Sec. 7907, R.C.M. 1921; re-en. Sec. 7907, R.C.M. 1935; R.C.M. 1947, 86-406.

72-20-110. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2958, Civ. C. 1895; re-en. Sec. 5372, Rev. C. 1907; re-en. Sec. 7886, R.C.M. 1921; Cal. Civ. C. Sec. 2223; Field Civ. C. Sec. 1175; re-en. Sec. 7886, R.C.M. 1935; R.C.M. 1947, 86-209.

72-20-111. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2959, Civ. C. 1895; re-en. Sec. 5373, Rev. C. 1907; re-en. Sec. 7887, R.C.M 1921; Cal. Civ. C. Sec. 2224; Field Civ. C. Sec. 1176; re-en. Sec. 7887, R.C.M. 1935; R.C.M. 1947, 86-210.

Part 2
Obligations of Trustee
(Repealed)

72-20-201. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2970, Civ. C. 1895; re-en. Sec. 5374, Rev. C. 1907; re-en. Sec. 7888, R.C.M. 1921; Cal. Civ. C. Sec. 2228; Field Civ. C. Sec. 1177; re-en. Sec. 7888, R.C.M. 1935; R.C.M. 1947, 86-301.

72-20-202. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2973, Civ. C. 1895; re-en. Sec. 5377, Rev. C. 1907; re-en. Sec. 7891, R.C.M. 1921; Cal. Civ. C. Sec. 2231; Field Civ. C. Sec. 1180; re-en. Sec. 7891, R.C.M. 1935; R.C.M. 1947, 86-304.

72-20-203. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Secs. 2971, 2979, Civ. C. 1895; re-en. Secs. 5375, 5383, Rev. C. 1907; re-en. Secs. 7889, 7897, R.C.M. 1921; Cal. Civ. C. Secs. 2229, 2237; Field Civ. C. Secs. 1178, 1186; re-en. Secs. 7889, 7897, R.C.M. 1935; R.C.M. 1947, 86-302, 86-310.

72-20-204. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2972, Civ. C. 1895; re-en. Sec. 5376, Rev. C. 1907; re-en. Sec. 7890, R.C.M. 1921; Cal. Civ. C. Sec. 2230; Based on Field Civ. C. Sec. 1179; re-en. Sec. 7890, R.C.M. 1935; R.C.M. 1947, 86-303.

72-20-205. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2974, Civ. C. 1895; re-en. Sec. 5378, Rev. C. 1907; re-en. Sec. 7892, R.C.M. 1921; Cal. Civ. C. Sec. 2232; Field Civ. C. Sec. 1181; re-en. Sec. 7892, R.C.M. 1935; R.C.M. 1947, 86-305.

72-20-206. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2975, Civ. C. 1895; re-en. Sec. 5379, Rev. C. 1907; re-en. Sec. 7893, R.C.M. 1921; Cal. Civ. C. Sec. 2233; Field Civ. C. Sec. 1182; re-en. Sec. 7893, R.C.M. 1935; R.C.M. 1947, 86-306.

72-20-207. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2976, Civ. C. 1895; re-en. Sec. 5380, Rev. C. 1907; re-en. Sec. 7894, R.C.M. 1921; Cal. Civ. C. Sec. 2234; Field Civ. C. Sec. 1183; re-en. Sec. 7894, R.C.M. 1935; R.C.M. 1947, 86-307.

72-20-208. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2977, Civ. C. 1895; re-en. Sec. 5381, Rev. C. 1907; re-en. Sec. 7895, R.C.M. 1921; Cal. Civ. C. Sec. 2235; Field Civ. C. Sec. 1184; re-en. Sec. 7895, R.C.M. 1935; R.C.M. 1947, 86-308.

72-20-209. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2978, Civ. C. 1895; re-en. Sec. 5382, Rev. C. 1907; re-en. Sec. 7896, R.C.M. 1921; Cal. Civ. C. Sec. 2236; Field Civ. C. Sec. 1185; re-en. Sec. 7896, R.C.M. 1935; R.C.M. 1947, 86-309.

72-20-210. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2980, Civ. C. 1895; re-en. Sec. 5384, Rev. C. 1907; re-en. Sec. 7898, R.C.M. 1921; Cal. Civ. C. Sec. 2238; Field Civ. C. Sec. 1187; re-en. Sec. 7898, R.C.M. 1935; R.C.M. 1947, 86-311.

72-20-211. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2981, Civ. C. 1895; re-en. Sec. 5385, Rev. C. 1907; re-en. Sec. 7899, R.C.M. 1921; Cal. Civ. C. Sec. 2239; Field Civ. C. Sec. 1188; re-en. Sec. 7899, R.C.M. 1935; R.C.M. 1947, 86-312.

Part 3
Rights and Duties of Third Persons
(Repealed)

72-20-301. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2990, Civ. C. 1895; re-en. Sec. 5386, Rev. C. 1907; re-en. Sec. 7900, R.C.M. 1921; Cal. Civ. C. Sec. 2243; Field Civ. C. Sec. 1189; re-en. Sec. 7900, R.C.M. 1935; R.C.M. 1947, 86-313.

72-20-302. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 2991, Civ. C. 1895; re-en. Sec. 5387, Rev. C. 1907; re-en. Sec. 7901, R.C.M. 1921; Cal. Civ. C. Sec. 2244; Field Civ. C. Sec. 1190; re-en. Sec. 7901, R.C.M. 1935; R.C.M. 1947, 86-314.

Part 4
Trustee Accounts
(Repealed)

72-20-401. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-402. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-403. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-404. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-405. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-406. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-407. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part); amd. Sec. 12, Ch. 2, L. 1983.

72-20-408. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-409. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part); amd. Sec. 30, Ch. 6, L. 1979.

Part 5
Transfer of Interest in Trust
(Repealed)

72-20-501. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1530, Civ. C. 1895; re-en. Sec. 4630, Rev. C. 1907; re-en. Sec. 6877, R.C.M. 1921; Cal. Civ. C. Sec. 1135; Based on Field Civ. C. Sec. 495; re-en. Sec. 6877, R.C.M. 1935; R.C.M. 1947, 67-1701.

CHAPTER 21
TRUSTEES' POWERS ACT
(Repealed)

Part 1 — General Provisions (Repealed)
Part 2 — Trustees' Powers — Limitations (Repealed)

Part 1
General Provisions
(Repealed)

72-21-101. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-910 by Sec. 9, Ch. 297, L. 1974; R.C.M. 1947, 86-910.

72-21-102. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-908 by Sec. 7, Ch. 297, L. 1974; R.C.M. 1947, 86-908.

72-21-103. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-909 by Sec. 8, Ch. 297, L. 1974; R.C.M. 1947, 86-909.

72-21-104. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-902 by Sec. 1, Ch. 297, L. 1974; R.C.M. 1947, 86-902.

Part 2
Trustees' Powers — Limitations
(Repealed)

72-21-201. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-903 by Sec. 2, Ch. 297, L. 1974; R.C.M. 1947, 86-903.

72-21-202. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-904 by Sec. 3, Ch. 297, L. 1974; R.C.M. 1947, 86-904(1), (3); amd. Sec. 1, Ch. 93, L. 1981; amd. Sec. 2, Ch. 145, L. 1989.

72-21-203. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-904 by Sec. 3, Ch. 297, L. 1974; R.C.M. 1947, 86-904(2).

72-21-204. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-906 by Sec. 5, Ch. 297, L. 1974; R.C.M. 1947, 86-906.

72-21-205. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-905 by Sec. 4, Ch. 297, L. 1974; amd. Sec. 9, Ch. 401, L. 1975; R.C.M. 1947, 86-905.

72-21-206. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. 86-907 by Sec. 6, Ch. 297, L. 1974; R.C.M. 1947, 86-907.

CHAPTER 22
CONVEYANCE OF TRUST PROPERTY BY COURT ORDER
(Repealed)

Part 1 — Rights, Powers, and Duties (Repealed)
Part 2 — Procedure (Repealed)

Part 1
Rights, Powers, and Duties
(Repealed)

72-22-101. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 265, L. 1947; R.C.M. 1947, 86-315(part).

72-22-102. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1, Ch. 265, L. 1947; R.C.M. 1947, 86-315(part).

72-22-103. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 2, Ch. 265, L. 1947; R.C.M. 1947, 86-316.

72-22-104. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3, Ch. 265, L. 1947; R.C.M. 1947, 86-317.

72-22-105. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 12, Ch. 265, L. 1947; R.C.M. 1947, 86-326.

Part 2
Procedure
(Repealed)

72-22-201. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 5, Ch. 265, L. 1947; R.C.M. 1947, 86-319.

72-22-202. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 4, Ch. 265, L. 1947; R.C.M. 1947, 86-318(part).

72-22-203. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 4, Ch. 265, L. 1947; R.C.M. 1947, 86-318(part).

72-22-204. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 6, Ch. 265, L. 1947; R.C.M. 1947, 86-320.

72-22-205. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 7, Ch. 265, L. 1947; R.C.M. 1947, 86-321.

72-22-206. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 8, Ch. 265, L. 1947; R.C.M. 1947, 86-322.

72-22-207. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 9, Ch. 265, L. 1947; R.C.M. 1947, 86-323(part).

72-22-208. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 9, Ch. 265, L. 1947; R.C.M. 1947, 86-323(part).

72-22-209. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 11, Ch. 265, L. 1947; R.C.M. 1947, 86-325.

72-22-210. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 10, Ch. 265, L. 1947; R.C.M. 1947, 86-324.

CHAPTER 23
TRUSTS FOR BENEFIT OF THIRD PERSONS
(Repealed)

Part 1 — General Provisions (Repealed)
Part 2 — Nature and Creation (Repealed)
Part 3 — Obligations and Powers of Trustee (Repealed)
Part 4 — Rights of Trustee (Repealed)
Part 5 — Termination of Trust and Office of Trustee — Succession (Repealed)

Part 1
General Provisions
(Repealed)

72-23-101. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3000, Civ. C. 1895; re-en. Sec. 5388, Rev. C. 1907; re-en. Sec. 7902, R.C.M. 1921; Cal. Civ. C. Sec. 2250; Field Civ. C. Sec. 1191; re-en. Sec. 7902, R.C.M. 1935; R.C.M. 1947, 86-401.

Part 2
Nature and Creation
(Repealed)

72-23-201. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3001, Civ. C. 1895; re-en. Sec. 5389, Rev. C. 1907; re-en. Sec. 7903, R.C.M. 1921; Cal. Civ. C. Sec. 2251; Field Civ. C. Sec. 1192; re-en. Sec. 7903, R.C.M. 1935; R.C.M. 1947, 86-402.

72-23-202. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3002, Civ. C. 1895; re-en. Sec. 5390, Rev. C. 1907; re-en. Sec. 7904, R.C.M. 1921; Cal. Civ. C. Sec. 2252; Field Civ. C. Sec. 1193; re-en. Sec. 7904, R.C.M. 1935; R.C.M. 1947, 86-403.

72-23-203. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3003, Civ. C. 1895; re-en. Sec. 5391, Rev. C. 1907; re-en. Sec. 7905, R.C.M. 1921; Cal. Civ. C. Sec. 2253; Field Civ. C. Sec. 1194; re-en. Sec. 7905, R.C.M. 1935; R.C.M. 1947, 86-404.

72-23-204. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3004, Civ. C. 1895; re-en. Sec. 5392, Rev. C. 1907; re-en. Sec. 7906, R.C.M. 1921; Cal. Civ. C. Sec. 2254; Field Civ. C. Sec. 1195; re-en. Sec. 7906, R.C.M. 1935; R.C.M. 1947, 86-405.

Part 3
Obligations and Powers of Trustee
(Repealed)

72-23-301. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3010, Civ. C. 1895; re-en. Sec. 5393, Rev. C. 1907; re-en. Sec. 7908, R.C.M. 1921; Cal. Civ. C. Sec. 2258; Field Civ. C. Sec. 1196; re-en. Sec. 7908, R.C.M. 1935; R.C.M. 1947, 86-501.

72-23-302. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3011, Civ. C. 1895; re-en. Sec. 5394, Rev. C. 1907; re-en. Sec. 7909, R.C.M. 1921; Cal. Civ. C. Sec. 2259; Field Civ. C. Sec. 1197; re-en. Sec. 7909, R.C.M. 1935; R.C.M. 1947, 86-502.

72-23-303. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3013, Civ. C. 1895; re-en. Sec. 5396, Rev. C. 1907; re-en. Sec. 7911, R.C.M. 1921; Cal. Civ. C. Sec. 2261; Field Civ. C. Sec. 1199; re-en. Sec. 7911, R.C.M. 1935; R.C.M. 1947, 86-504.

72-23-304. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3014, Civ. C. 1895; re-en. Sec. 5397, Rev. C. 1907; re-en. Sec. 7912, R.C.M. 1921; Cal. Civ. C. Sec. 2262; Field Civ. C. Sec. 1200; re-en. Sec. 7912, R.C.M. 1935; R.C.M. 1947, 86-505.

72-23-305. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3015, Civ. C. 1895; re-en. Sec. 5398, Rev. C. 1907; re-en. Sec. 7913, R.C.M. 1921; Cal. Civ. C. Sec. 2263; Field Civ. C. Sec. 1201; re-en. Sec. 7913, R.C.M. 1935; R.C.M. 1947, 86-506.

72-23-306. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3022, Civ. C. 1895; re-en. Sec. 5401, Rev. C. 1907; re-en. Sec. 7916, R.C.M. 1921; Cal. Civ. C. Sec. 2269; Field Civ. C. Sec. 1204; re-en. Sec. 7916, R.C.M. 1935; R.C.M. 1947, 86-509.

72-23-307. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3020, Civ. C. 1895; re-en. Sec. 5399, Rev. C. 1907; re-en. Sec. 7914, R.C.M. 1921; Cal. Civ. C. Sec. 2267; Field Civ. C. Sec. 1202; re-en. Sec. 7914, R.C.M. 1935; R.C.M. 1947, 86-507.

72-23-308. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3021, Civ. C. 1895; re-en. Sec. 5400, Rev. C. 1907; re-en. Sec. 7915, R.C.M. 1921; Cal. Civ. C. Sec. 2268; Field Civ. C. Sec. 1203; re-en. Sec. 7915, R.C.M. 1935; R.C.M. 1947, 86-508.

Part 4
Rights of Trustee
(Repealed)

72-23-401. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3030, Civ. C. 1895; re-en. Sec. 5402, Rev. C. 1907; re-en. Sec. 7917, R.C.M. 1921; Cal. Civ. C. Sec. 2273; Field Civ. C. Sec. 1205; re-en. Sec. 7917, R.C.M. 1935; R.C.M. 1947, 86-510.

72-23-402. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R.C.M. 1921; Cal. Civ. C. Sec. 2274; Field Civ. C. Sec. 1206; re-en. Sec. 7918, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1965; R.C.M. 1947, 86-511.

72-23-403. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3032, Civ. C. 1895; re-en. Sec. 5404, Rev. C. 1907; re-en. Sec. 7919, R.C.M. 1921; Cal. Civ. C. Sec. 2275; Field Civ. C. Sec. 1207; re-en. Sec. 7919, R.C.M. 1935; R.C.M. 1947, 86-512.

Part 5
Termination of Trust and Office of Trustee — Succession
(Repealed)

72-23-501. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3040, Civ. C. 1895; re-en. Sec. 5405, Rev. C. 1907; re-en. Sec. 7920, R.C.M. 1921; Cal. Civ. C. Sec. 2279; Field Civ. C. Sec. 1208; re-en. Sec. 7920, R.C.M. 1935; R.C.M. 1947, 86-601.

72-23-502. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 3041, Civ. C. 1895; re-en. Sec. 5406, Rev. C. 1907; re-en. Sec. 7921, R.C.M. 1921; Cal. Civ. C. Sec. 2280; Field Civ. C. Sec. 1209; re-en. Sec. 7921, R.C.M. 1935; R.C.M. 1947, 86-602.

72-23-503. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3042, Civ. C. 1895; re-en. Sec. 5407, Rev. C. 1907; re-en. Sec. 7922, R.C.M. 1921; Cal. Civ. C. Sec. 2281; Field Civ. C. Sec. 1210; re-en. Sec. 7922, R.C.M. 1935; R.C.M. 1947, 86-603.

72-23-504. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3043, Civ. C. 1895; re-en. Sec. 5408, Rev. C. 1907; re-en. Sec. 7923, R.C.M. 1921; Cal. Civ. C. Sec. 2282; Field Civ. C. Sec. 1211; re-en. Sec. 7923, R.C.M. 1935; R.C.M. 1947, 86-604.

72-23-505. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3012, Civ. C. 1895; re-en. Sec. 5395, Rev. C. 1907; re-en. Sec. 7910, R.C.M. 1921; Cal. Civ. C. Sec. 2260; Field Civ. C. Sec. 1198; re-en. Sec. 7910, R.C.M. 1935; R.C.M. 1947, 86-503.

72-23-506. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3044, Civ. C. 1895; re-en. Sec. 5409, Rev. C. 1907; re-en. Sec. 7924, R.C.M. 1921; Cal. Civ. C. Sec. 2283; Based on Field Civ. C. Sec. 1212; re-en. Sec. 7924, R.C.M. 1935; R.C.M. 1947, 86-605.

72-23-507. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3050, Civ. C. 1895; re-en. Sec. 5410, Rev. C. 1907; re-en. Sec. 7925, R.C.M. 1921; Cal. Civ. C. Sec. 2287; Based on Field Civ. C. Sec. 1213; re-en. Sec. 7925, R.C.M. 1935; R.C.M. 1947, 86-606.

72-23-508. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 3052, Civ. C. 1895; re-en. Sec. 5412, Rev. C. 1907; re-en. Sec. 7927, R.C.M. 1921; Cal. Civ. C. Sec. 2289; Based on Field Civ. C. Sec. 1215; re-en. Sec. 7927, R.C.M. 1935; R.C.M. 1947, 86-608.

CHAPTER 24
TRUSTS IN RELATION TO REAL PROPERTY
(Repealed)

Part 1 — Nature and Creation (Repealed)

Part 2 — Powers, Rights, and Duties (Repealed)

Part 1
Nature and Creation
(Repealed)

72-24-101. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1310, Civ. C. 1895; re-en. Sec. 4536, Rev. C. 1907; re-en. Sec. 6783, R.C.M. 1921; Cal. Civ. C. Sec. 847; re-en. Sec. 6783, R.C.M. 1935; R.C.M. 1947, 86-101.

72-24-102. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1311, Civ. C. 1895; re-en. Sec. 4537, Rev. C. 1907; re-en. Sec. 6784, R.C.M. 1921; Cal. Civ. C. Sec. 852; Field Civ. C. Sec. 280; re-en. Sec. 6784, R.C.M. 1935; R.C.M. 1947, 86-102.

72-24-103. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1314, Civ. C. 1895; re-en. Sec. 4540, Rev. C. 1907; re-en. Sec. 6787, R.C.M. 1921; Cal. Civ. C. Sec. 857; Based on Field Civ. C. Sec. 285; re-en. Sec. 6787, R.C.M. 1935; R.C.M. 1947, 86-105; amd. Sec. 31, Ch. 6, L. 1979.

72-24-104. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1312, Civ. C. 1895; re-en. Sec. 4538, Rev. C. 1907; re-en. Sec. 6785, R.C.M. 1921; Cal. Civ. C. Sec. 853; Field Civ. C. Sec. 281; re-en. Sec. 6785, R.C.M. 1935; R.C.M. 1947, 86-103.

Part 2
Powers, Rights, and Duties
(Repealed)

72-24-201. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1317, Civ. C. 1895; re-en. Sec. 4543, Rev. C. 1907; re-en. Sec. 6790, R.C.M. 1921; Cal. Civ. C. Sec. 863; Field Civ. C. Sec. 291; re-en. Sec. 6790, R.C.M. 1935; R.C.M. 1947, 86-108.

72-24-202. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 1318, Civ. C. 1895; re-en. Sec. 4544, Rev. C. 1907; re-en. Sec. 6791, R.C.M. 1921; Cal. Civ. C. Sec. 864; Field Civ. C. Sec. 292; re-en. Sec. 6791, R.C.M. 1935; R.C.M. 1947, 86-109.

72-24-203. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1319, Civ. C. 1895; re-en. Sec. 4545, Rev. C. 1907; re-en. Sec. 6792, R.C.M. 1921; Cal. Civ. C. Sec. 865; Field Civ. C. Sec. 293; re-en. Sec. 6792, R.C.M. 1935; R.C.M. 1947, 86-110.

72-24-204. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1320, Civ. C. 1895; re-en. Sec. 4546, Rev. C. 1907; re-en. Sec. 6793, R.C.M. 1921; Cal. Civ. C. Sec. 866; Field Civ. C. Sec. 294; re-en. Sec. 6793, R.C.M. 1935; R.C.M. 1947, 86-111.

72-24-205. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1321, Civ. C. 1895; re-en. Sec. 4547, Rev. C. 1907; re-en. Sec. 6794, R.C.M. 1921; Cal. Civ. C. Sec. 867; Based on Field Civ. C. Secs. 295 and 296; re-en. Sec. 6794, R.C.M. 1935; R.C.M. 1947, 86-112.

72-24-206. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1323, Civ. C. 1895; re-en. Sec. 4549, Rev. C. 1907; re-en. Sec. 6796, R.C.M. 1921; Cal. Civ. C. Sec. 870; Field Civ. C. Sec. 298; re-en. Sec. 6796, R.C.M. 1935; R.C.M. 1947, 86-114.

72-24-207. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1316, Civ. C. 1895; re-en. Sec. 4542, Rev. C. 1907; re-en. Sec. 6789, R.C.M. 1921; Cal. Civ. C. Sec. 860; Field Civ. C. Sec. 323; re-en. Sec. 6789, R.C.M. 1935; R.C.M. 1947, 86-107.

72-24-208. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1313, Civ. C. 1895; re-en. Sec. 4539, Rev. C. 1907; re-en. Sec. 6786, R.C.M. 1921; Cal. Civ. C. Sec. 856; Field Civ. C. Sec. 284; re-en. Sec. 6786, R.C.M. 1935; R.C.M. 1947, 86-104.

72-24-209. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1322, Civ. C. 1895; re-en. Sec. 4548, Rev. C. 1907; re-en. Sec. 6795, R.C.M. 1921; Cal. Civ. C. Sec. 869; Based on Field Civ. C. Sec. 297; re-en. Sec. 6795, R.C.M. 1935; R.C.M. 1947, 86-113.

72-24-210. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1315, Civ. C. 1895; re-en. Sec. 4541, Rev. C. 1907; re-en. Sec. 6788, R.C.M. 1921; Cal. Civ. C. Sec. 859; Field Civ. C. Sec. 287; re-en. Sec. 6788, R.C.M. 1935; R.C.M. 1947, 86-106.

72-24-211. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1324, Civ. C. 1895; re-en. Sec. 4550, Rev. C. 1907; re-en. Sec. 6797, R.C.M. 1921; Cal. Civ. C. Sec. 871; Field Civ. C. Sec. 299; re-en. Sec. 6797, R.C.M. 1935; R.C.M. 1947, 86-115.

CHAPTER 25
REVISED UNIFORM PRINCIPAL AND INCOME ACT
(Repealed)

Part 1 — General Provisions (Repealed)

Part 2 — Ascertainment of Principal and Income Allocation of Receipts (Repealed)

Part 3 — Allocation of Expenses (Repealed)

Part 4 — Principal and Income Receipts and Expenditures (Repealed)

Part 1
General Provisions
(Repealed)

72-25-101. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 15, Ch. 277, L. 1959; R.C.M. 1947, 67-1915; amd. Sec. 1, Ch. 371, L. 1983.

72-25-102. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 1, Ch. 277, L. 1959; R.C.M. 1947, 67-1901; amd. Sec. 2, Ch. 371, L. 1983.

72-25-103. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 17, Ch. 277, L. 1959; R.C.M. 1947, 67-1916(part); amd. Sec. 3, Ch. 371, L. 1983.

72-25-104. Repealed. Sec. 16, Ch. 371, L. 1983.

History: En. Sec. 2, Ch. 277, L. 1959; R.C.M. 1947, 67-1902.

72-25-105. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 14, Ch. 277, L. 1959; R.C.M. 1947, 67-1914; amd. Sec. 4, Ch. 371, L. 1983.

Part 2
Ascertainment of Principal and Income Allocation of Receipts (Repealed)

72-25-201. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 3, Ch. 277, L. 1959; R.C.M. 1947, 67-1903.

72-25-202. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 4, Ch. 277, L. 1959; R.C.M. 1947, 67-1904.

72-25-203. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 5, Ch. 277, L. 1959; R.C.M. 1947, 67-1905.

72-25-204. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 6, Ch. 277, L. 1959; R.C.M. 1947, 67-1906.

72-25-205. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 7, Ch. 277, L. 1959; R.C.M. 1947, 67-1907.

72-25-206. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 8, Ch. 277, L. 1959; R.C.M. 1947, 67-1908.

72-25-207. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 9, Ch. 277, L. 1959; R.C.M. 1947, 67-1909.

72-25-208. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 10, Ch. 277, L. 1959; R.C.M. 1947, 67-1910.

72-25-209. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 11, Ch. 277, L. 1959; R.C.M. 1947, 67-1911.

Part 3
Allocation of Expenses (Repealed)

72-25-301. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 12, Ch. 277, L. 1959; amd. Sec. 1, Ch. 134, L. 1965; R.C.M. 1947, 67-1912.

72-25-302. Repealed. Sec. 16, Ch. 371, L. 1983.
History: En. Sec. 13, Ch. 277, L. 1959; R.C.M. 1947, 67-1913.

Part 4
Principal and Income Receipts and Expenditures (Repealed)

72-25-401. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 5, Ch. 371, L. 1983.

72-25-402. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 6, Ch. 371, L. 1983.

72-25-403. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 7, Ch. 371, L. 1983.

72-25-404. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 8, Ch. 371, L. 1983.

72-25-405. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 9, Ch. 371, L. 1983.

72-25-406. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 10, Ch. 371, L. 1983.

72-25-407. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 11, Ch. 371, L. 1983.

72-25-408. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 12, Ch. 371, L. 1983.

72-25-409. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 13, Ch. 371, L. 1983.

72-25-410. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 14, Ch. 371, L. 1983.

72-25-411. Repealed. Sec. 220, Ch. 685, L. 1989.
History: En. Sec. 15, Ch. 371, L. 1983.

CHAPTER 26
UNIFORM TRANSFERS TO MINORS ACT

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Part 1
Uniform Gifts to Minors Act General Provisions (Repealed)

72-26-101. Repealed. Sec. 25, Ch. 102, L. 1985.
History: En. Sec. 10, Ch. 245, L. 1957; amd. Sec. 7, Ch. 234, L. 1967; R.C.M. 1947, 67-1810.

72-26-102. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 1, Ch. 245, L. 1957; amd. Sec. 1, Ch. 234, L. 1967; amd. Sec. 11, Ch. 423, L. 1971; R.C.M. 1947, 67-1801.

72-26-103. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 9, Ch. 245, L. 1957; R.C.M. 1947, 67-1809.

72-26-104. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 12, Ch. 245, L. 1957; amd. Sec. 8, Ch. 234, L. 1967; R.C.M. 1947, 67-1811.

Part 2
Uniform Gifts to Minors Act Making and Effect of Gift (Repealed)

72-26-201. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 2, Ch. 245, L. 1957; amd. Sec. 2, Ch. 234, L. 1967; R.C.M. 1947, 67-1802; amd. Sec. 32, Ch. 6, L. 1979; amd. Sec. 1, Ch. 8, L. 1981.

72-26-202. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 3, Ch. 245, L. 1957; amd. Sec. 3, Ch. 234, L. 1967; R.C.M. 1947, 67-1803.

Part 3
Uniform Gifts to Minors Act Gift Administration — Custodian (Repealed)

72-26-301. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(d).

72-26-302. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 4, Ch. 245, L. 1957; amd. Sec. 4, Ch. 234, L. 1967; amd. Sec. 12, Ch. 423, L. 1971; R.C.M. 1947, 67-1804.

72-26-303. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 6, Ch. 245, L. 1957; amd. Sec. 5, Ch. 234, L. 1967; R.C.M. 1947, 67-1806.

72-26-304. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(a) thru (c).

72-26-305. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(e).

72-26-306. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 8, Ch. 245, L. 1957; R.C.M. 1947, 67-1808.

Part 4
Uniform Gifts to Minors Act Resignation, Death, or Removal of Custodian — Bonding — Successor (Repealed)

72-26-401. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part).

72-26-402. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part); amd. Sec. 33, Ch. 6, L. 1979.

72-26-403. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part).

72-26-404. Repealed. Sec. 25, Ch. 102, L. 1985.

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(e), (f).

Part 5
General Provisions

72-26-501. Short title. This chapter may be cited as the "Montana Uniform Transfers to Minors Act".

History: En. Sec. 1, Ch. 102, L. 1985.

72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who has attained the age of 21 years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means district court.

(6) "Custodial property" means:

(a) any interest in property transferred to a custodian under this chapter; and

(b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of 21 years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

History: En. Sec. 3, Ch. 102, L. 1985; amd. Sec. 29, Ch. 582, L. 1989.

72-26-503. Scope and jurisdiction. (1) This chapter applies to a transfer that refers to this chapter in the designation under 72-26-603(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

History: En. Sec. 4, Ch. 102, L. 1985.

72-26-504. Applicability. This chapter applies to a transfer within the scope of 72-26-503 made after October 1, 1985, if:

(1) the transfer purports to have been made under the provisions of Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985);

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

History: **En. Sec. 23, Ch. 102, L. 1985.**

72-26-505. Effect on existing custodianships. (1) Any transfer of custodial property as now defined in this chapter made before October 1, 1985, is validated notwithstanding that there was no specific authority in Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985), for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before October 1, 1985, in a manner and form prescribed in Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985), except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on October 1, 1985.

(3) Sections 72-26-502 and 72-26-803, with respect to the age of a minor for whom custodial property is held under this chapter, do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 before October 1, 1985.

History: **En. Sec. 24, Ch. 102, L. 1985.**

72-26-506. Uniformity of application and construction. This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: **En. Sec. 2, Ch. 102, L. 1985.**

Part 6

Manner of Creating Custodial Property and Effecting Transfer

72-26-601. Nomination of custodian. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under 72-26-603(1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under 72-26-603. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to 72-26-603.

History: **En. Sec. 5, Ch. 102, L. 1985.**

72-26-602. Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

History: **En. Sec. 12, Ch. 102, L. 1985.**

72-26-603. Manner of creating custodial property and effecting transfer — designation of initial custodian — control. (1) Custodial property is created and a transfer is made whenever:

(a) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2);

(b) money is paid or delivered or a security held in the name of a broker, financial institution, or its nominee is transferred to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(c) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(d) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(e) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(f) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(g) an interest in any property not described in subsections (1)(a) through (1)(f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2).

(2) An instrument in the following form satisfies the requirements of subsections (1)(a)(ii) and (1)(g):

"TRANSFER UNDER THE MONTANA
UNIFORM TRANSFERS TO MINORS ACT

I, ... (name of transferor or name and representative capacity if a fiduciary), hereby transfer to .... (name of custodian), as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: ....
....
(Signature)

.... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Montana Uniform Transfers to Minors Act.
Dated: ....
....
(Signature of Custodian)"

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

History: **En. Sec. 11, Ch. 102, L. 1985; amd. Sec. 1, Ch. 86, L. 1987.**

72-26-604. Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to or the irrevocable exercise of a power of appointment in favor of a custodian for the benefit of a minor pursuant to 72-26-603.

History: **En. Sec. 6, Ch. 102, L. 1985.**

72-26-605. Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer pursuant to 72-26-603 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under 72-26-601 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under 72-26-601 or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under 72-26-603(1).

History: **En. Sec. 7, Ch. 102, L. 1985.**

72-26-606. Other transfer by fiduciary. (1) Subject to subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to 72-26-603, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to 72-26-603.

(3) A transfer under subsection (1) or (2) may be made only if:

(a) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;

(b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(c) the transfer is authorized by the court if it exceeds $10,000 in value.

History: **En. Sec. 8, Ch. 102, L. 1985.**

72-26-607. Transfer by obligor. (1) Subject to subsections (2) and (3), a person not subject to 72-26-605 or 72-26-606 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to 72-26-603.

(2) If a person having the right to do so under 72-26-601 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under 72-26-601 or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

History: **En. Sec. 9, Ch. 102, L. 1985.**

72-26-608. Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

History: **En. Sec. 10, Ch. 102, L. 1985.**

72-26-609. Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) failure of the transferor to comply with 72-26-603(3) concerning possession and control;

(b) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under 72-26-603(1); or

(c) death or incapacity of a person nominated under 72-26-601 or designated under 72-26-603 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to 72-26-603 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

History: **En. Sec. 13, Ch. 102, L. 1985.**

Part 7
Administration by Custodian — Liability

72-26-701. Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of 72-26-702.

History: **En. Sec. 15, Ch. 102, L. 1985.**

72-26-702. Care of custodial property. (1) A custodian shall:

(a) take control of custodial property;

(b) register or record title to custodial property if appropriate; and

(c) collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian, in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered or held in an account designated in the name of the custodian, followed in substance by the words: "as a custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act".

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

History: **En. Sec. 14, Ch. 102, L. 1985.**

72-26-703. Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) the duty or ability of the custodian personally or of any other person to support the minor; or

(b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

History: En. Sec. 16, Ch. 102, L. 1985.

72-26-704. Custodian's expenses, compensation, and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under 72-26-604, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in 72-26-801(6), a custodian need not give a bond.

History: En. Sec. 17, Ch. 102, L. 1985.

72-26-705. Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) the validity of the purported custodian's designation;

(2) the propriety of or the authority under this chapter for any act of the purported custodian;

(3) the validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

History: En. Sec. 18, Ch. 102, L. 1985.

72-26-706. Liability to third persons. (1) A claim may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor when it is based on:

(a) a contract entered into by a custodian acting in a custodial capacity;

(b) an obligation arising from the ownership or control of custodial property; or

(c) a tort committed during the custodianship.

(2) A custodian is not personally liable:

(a) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

History: En. Sec. 19, Ch. 102, L. 1985.

Part 8

Renunciation, Resignation, Death, or Removal of Custodian — Accounting — Termination — Successor

72-26-801. Renunciation, resignation, death, or removal of custodian — designation of successor custodian. (1) A person nominated under 72-26-601 or designated under 72-26-603 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under 72-26-601, the person who made the nomination may nominate a substitute custodian under 72-26-601; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under 72-26-603(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under 72-26-604 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (2), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) or resigns under subsection (3) or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under 72-26-604 or to require the custodian to give appropriate bond.

History: **En. Sec. 20, Ch. 102, L. 1985.**

72-26-802. Accounting by and determination of liability of custodian. (1) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

(a) for an accounting by the custodian or the custodian's legal representative; or

(b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under 72-26-706 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under 72-26-801(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: **En. Sec. 21, Ch. 102, L. 1985.**

72-26-803. Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's attainment of 21 years of age with respect to custodial property transferred under 72-26-604 or 72-26-605;

(2) the minor's attainment of 18 years of age with respect to custodial property transferred under 72-26-606 or 72-26-607; or

(3) the minor's death.

History: En. Sec. 22, Ch. 102, L. 1985.

CHAPTER 27
MISCELLANEOUS PROVISIONS RELATING TO TRUSTS
(Renumbered and Repealed)

Part 1 — Charitable Trusts in Relation to Federal Tax Laws (Repealed)

Part 2 — Prearranged Funeral Plans and Related Services — Mandatory Trust (Renumbered)

Part 1
Charitable Trusts in Relation to Federal Tax Laws (Repealed)

72-27-101. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. 86-707 by Sec. 1, Ch. 332, L. 1974; R.C.M. 1947, 86-707(1).

72-27-102. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. 86-707 by Sec. 1, Ch. 332, L. 1974; R.C.M. 1947, 86-707(2).

Part 2
Prearranged Funeral Plans and Related Services — Mandatory Trust (Renumbered)

72-27-201. Renumbered 72-37-101. Code Commissioner, 1989.

72-27-202. Renumbered 72-37-102. Code Commissioner, 1989.

72-27-203. Renumbered 72-37-103. Code Commissioner, 1989.

72-27-204. Renumbered 72-37-104. Code Commissioner, 1989.

CHAPTERS 28 AND 29
RESERVED

CHAPTER 30
MANAGEMENT OF INSTITUTIONAL FUNDS

Part 1 — General Provisions

72-30-101. Short title.
72-30-102. Definitions.
72-30-103. Uniformity of application and construction.

Part 2 — Management of Funds

72-30-201. Repealed.
72-30-202. Repealed.
72-30-203. Repealed.
72-30-204. Repealed.
72-30-205. Repealed.
72-30-206. Repealed.
72-30-207. Release or modification of restrictions on management, investment, or purpose.
72-30-208. Standard of conduct in managing and investing institutional fund.
72-30-209. Appropriation for expenditure or accumulation of endowment fund — rules of construction.
72-30-210. Delegation of management and investment functions.

72-30-211. Reviewing compliance.
72-30-212. Application to existing institutional funds.
72-30-213. Relation to Electronic Signatures in Global and National Commerce Act.

Part 3 — Safeguarding Endowment Gifts Act

72-30-301. Short title — purpose.
72-30-302. Definitions.
72-30-303. Protections afforded.

Chapter Cross-References

Uniform Common Trust Act, Title 32, ch. 1, part 7.
Trust Code — general provisions, Title 72, ch. 38.

Part 1
General Provisions

72-30-101. Short title. This chapter may be cited as the "Uniform Prudent Management of Institutional Funds Act".

History: En. Sec. 10, Ch. 389, L. 1973; R.C.M. 1947, 86-809; amd. Sec. 1, Ch. 421, L. 2007.

72-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) (a) "Endowment fund" means an institutional fund or any part of the fund that under the terms of a gift instrument or instrument of donor intent is not wholly expendable by the institution on a current basis.

(b) The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(a) a person, other than an individual, organized and operated exclusively for charitable purposes;

(b) a government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose; and

(c) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) (a) "Institutional fund" means a fund held by an institution exclusively for charitable purposes.

(b) The term does not include:

(i) program-related assets;

(ii) a fund held for an institution by a trustee that is not an institution; or

(iii) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Instrument of donor intent" means a record by a person that contributed property, pursuant to the provisions of this chapter that were in effect prior to October 1, 2007, setting forth the person's intention regarding investment or retention of the contributed property.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

History: En. Sec. 1, Ch. 389, L. 1973; R.C.M. 1947, 86-801(part); amd. Sec. 2, Ch. 421, L. 2007; amd. Sec. 1, Ch. 328, L. 2009.

72-30-103. Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among those states that enact it.

History: **En. Sec. 9, Ch. 389, L. 1973; R.C.M. 1947, 86-808; amd. Sec. 3, Ch. 421, L. 2007.**

Part 2
Management of Funds

72-30-201. Repealed. Sec. 11, Ch. 421, L. 2007.

History: **En. Sec. 2, Ch. 389, L. 1973; R.C.M. 1947, 86-802.**

72-30-202. Repealed. Sec. 11, Ch. 421, L. 2007.

History: **En. Sec. 1, Ch. 389, L. 1973; R.C.M. 1947, 86-801(part).**

72-30-203. Repealed. Sec. 11, Ch. 421, L. 2007.

History: **En. Sec. 3, Ch. 389, L. 1973; R.C.M. 1947, 86-803.**

72-30-204. Repealed. Sec. 11, Ch. 421, L. 2007.

History: **En. Sec. 4, Ch. 389, L. 1973; R.C.M. 1947, 86-804; amd. Sec. 34, Ch. 6, L. 1979.**

72-30-205. Repealed. Sec. 11, Ch. 421, L. 2007.

History: **En. Sec. 5, Ch. 389, L. 1973; R.C.M. 1947, 86-805.**

72-30-206. Repealed. Sec. 11, Ch. 421, L. 2007.

History: **En. Sec. 6, Ch. 389, L. 1973; R.C.M. 1947, 86-806.**

72-30-207. Release or modification of restrictions on management, investment, or purpose. (1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument or instrument of donor intent on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument or instrument of donor intent regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument or instrument of donor intent on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument or instrument of donor intent. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument or instrument of donor intent on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument or instrument of donor intent and:

(a) the institutional fund subject to the restriction has a total value of less than $25,000; or

(b) more than 12 years have elapsed since the fund was established.

History: **En. Sec. 7, Ch. 389, L. 1973; R.C.M. 1947, 86-807; amd. Sec. 4, Ch. 421, L. 2007; amd. Sec. 2, Ch. 328, L. 2009; amd. Sec. 1, Ch. 267, L. 2021.**

72-30-208. Standard of conduct in managing and investing institutional fund. (1) Subject to the intent of a donor expressed in a gift instrument or instrument of donor intent, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(b) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument or instrument of donor intent, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(i) general economic conditions;

(ii) the possible effect of inflation or deflation;

(iii) the expected tax consequences, if any, of investment decisions or strategies;

(iv) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(v) the expected total return from income and the appreciation of investments;

(vi) other resources of the institution;

(vii) the needs of the institution and the fund to make distributions and to preserve capital; and

(viii) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(c) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification or unless the gift instrument or instrument of donor intent provides otherwise.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(f) A person that has special skills or expertise or is selected in reliance upon the person's representation that the person has special skills or expertise has a duty to use those skills or that expertise in managing and investing institutional funds.

History: En. Sec. 5, Ch. 421, L. 2007; amd. Sec. 3, Ch. 328, L. 2009.

72-30-209. Appropriation for expenditure or accumulation of endowment fund — rules of construction. (1) Subject to the intent of a donor expressed in the gift instrument or instrument of donor intent and to subsection (4), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument or instrument of donor intent, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall, in addition to considering the gift instrument or instrument of donor intent, consider, if relevant, the following factors:

(a) the duration and preservation of the endowment fund;
(b) the purposes of the institution and the endowment fund;
(c) general economic conditions;
(d) the possible effect of inflation or deflation;
(e) the expected total return from income and the appreciation of investments;
(f) other resources of the institution; and
(g) the investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1), a gift instrument or instrument of donor intent must specifically state the limitation.

(3) Terms in a gift instrument or instrument of donor intent designating a gift as an endowment or a direction or authorization in the gift instrument or instrument of donor intent to use only "income", "interest", "dividends", or "rents, issues, or profits" or "to preserve the principal intact" or words of similar import:

(a) create an endowment fund of permanent duration unless other language in the gift instrument or instrument of donor intent limits the duration or purpose of the fund; and

(b) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1).

(4) The appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than 3 years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(a) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument or instrument of donor intent; or

(b) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7% of the fair market value of the endowment fund.

History: En. Sec. 6, Ch. 421, L. 2007; amd. Sec. 4, Ch. 328, L. 2009.

72-30-210. Delegation of management and investment functions. (1) Subject to any specific limitation set forth in a gift instrument, in an instrument of donor intent, or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter.

History: En. Sec. 7, Ch. 421, L. 2007; amd. Sec. 5, Ch. 328, L. 2009.

72-30-211. Reviewing compliance. Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.

History: En. Sec. 8, Ch. 421, L. 2007.

72-30-212. Application to existing institutional funds. This chapter applies to institutional funds existing on or established after October 1, 2007. As applied to institutional funds existing on October 1, 2007, this chapter governs only decisions made or actions taken on or after that date.

History: **En. Sec. 9, Ch. 421, L. 2007.**

72-30-213. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: **En. Sec. 10, Ch. 421, L. 2007; amd. Sec. 33, Ch. 3, L. 2019.**

Part 3
Safeguarding Endowment Gifts Act

Part Compiler's Comments

Effective Date — Retroactive Applicability: Section 5, Ch. 176, L. 2025, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to any endowment agreement entered into on or after January 1, 1975." Approved April 17, 2025.

72-30-301. Short title — purpose. (1) This part may be cited as the "Safeguarding Endowment Gifts Act".

(2) This part is necessary to provide legal recourse to individual charitable donors when their giving restrictions are not followed by a recipient charitable organization according to an endowment agreement.

History: **En. Sec. 1, Ch. 176, L. 2025.**

72-30-302. Definitions. For the purposes of this part, the following definitions apply:

(1) "Charitable organization" means an organization arranged and operated exclusively for religious, charitable, scientific, literary, educational, or other specified purposes or for testing for public safety and that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

(2) "Donor" means an individual or entity who has made a contribution of property or money to either an existing endowment fund or a new endowment fund of a charitable organization or of a charitable trust pursuant to the terms of an endowment agreement that may include donor-imposed restrictions governing the use of the contribution.

(3) "Donor-imposed restriction" means a written statement within an endowment agreement that specifies obligations on the management or purpose of the endowment fund.

(4) "Endowment agreement" means a written agreement between a charitable organization and a donor or a charitable trust and a donor regarding the contribution made by the donor and accepted by the charitable organization or the charitable trust that may include donor-imposed restrictions governing the use of the contribution.

(5) (a) "Endowment fund" means an institutional fund or part of an institutional fund that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis.

(b) The term does not include assets that an institution designates as an endowment fund for its own use.

(6) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(7) "Legal representative" means the administrator or executor of a person's estate, if made known by the donor to the charitable organization, a surviving spouse if a court judgment has settled the accounts of the estate, or a person designated in an endowment agreement to act in place of a party to the agreement for all matters expressed in the agreement and all of the actions the agreement contemplates, including without limitation interpreting, performing, and enforcing the agreement and defending its validity.

(8) "Property" means real property, personal property or money, cryptocurrency, stocks, bonds, or any other asset or financial instrument.

History: **En. Sec. 2, Ch. 176, L. 2025.**

72-30-303. Protections afforded. (1) Except where specifically required or authorized by federal or state law, a charitable organization that accepts a contribution pursuant to a written donor-imposed restriction may not violate the terms of that restriction without potential penalty.

(2) If a charitable organization violates a donor-imposed restriction contained in an endowment agreement, the donor or that person's legal representative, 90 days after written notification is provided to the charitable organization at the organization's address of record, may file a complaint within 3 years after discovery for breach of the endowment agreement. The complaint may be filed in a court of general jurisdiction in the county where a charitable organization named as a party has its principal office or principal place of carrying out its charitable purpose or in a court of the United States whose district includes the county. The complaint may be filed regardless of whether the agreement expressly reserves a right to sue or enforce, and it may not seek a judgment awarding damages to the plaintiff.

(3) In the event a charitable organization is unable to fulfill a term in an endowment agreement, the donor or that person's legal representative must be notified 90 days in advance and offered an alternative solution that closely matches the initial term in the endowment agreement.

(4) A charitable organization may obtain a judicial declaration of rights and duties expressed in an endowment agreement containing donor restrictions as to all of the actions the agreement contemplates, including without limitation the interpretation, performance, and enforcement of the agreement and the determination of its validity. The charitable organization may seek the declaration in any suit brought under this section or by filing a complaint.

(5) If the court determines that a charitable organization violated a donor-imposed restriction in an endowment agreement, the court may order one or more remedies consistent with the charitable purposes expressed in the endowment agreement. The court may not order the return of donated funds to the donor or the donor's legal representative or estate.

(6) Nothing in this act affects the authority of the attorney general to enforce any restriction in an endowment agreement, limits the application of the judicial power of cy pres, or alters the right of an institution to modify a restriction on the management, investment, purpose, or use of an endowment fund in a manner permitted by the endowment agreement and by the Montana Uniform Prudent Management of Institutional Funds Act, Title 72, chapter 30.

History: En. Sec. 3, Ch. 176, L. 2025.

CHAPTER 31
MISCELLANEOUS PROVISIONS RELATING TO FIDUCIARIES

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Part 3 — Uniform Power of Attorney Act

72-31-301. Short title.
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72-31-401. Short title.
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72-31-412. Disclosure of other digital assets held in trust when trustee not original user.
72-31-413. Disclosure of digital assets to conservator of protected person.
72-31-414. Fiduciary duty and authority.
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72-31-416. Uniformity of application and construction.
72-31-417. Relation to Electronic Signatures in Global and National Commerce Act.

Chapter Cross-References

Resulting and constructive trusts, Title 72, ch. 38, part 1.

Part 1
General

72-31-101. Oath in behalf of corporation acting as fiduciary. In all matters in which a corporation is authorized to act as trustee, guardian, executor, administrator, or in any fiduciary capacity and an oath of office is required, it is proper for an officer of the corporation to take the required oath for and on behalf of the officer's corporation and the corporation becomes subject to the laws relating to individuals in similar matters so far as those laws may be applied to a corporation.

History: En. Sec. 1, Ch. 15, L. 1905; re-en. Sec. 7194, Rev. C. 1907; re-en. Sec. 9828, R.C.M. 1921; re-en. Sec. 9828, R.C.M. 1935; R.C.M. 1947, 93-8713; amd. Sec. 2475, Ch. 56, L. 2009.

Cross-References
Uniform Common Trust Act, Title 32, ch. 1, part 7.

72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized. Notwithstanding any other provision of law, it is lawful for any executor, administrator, guardian or conservator, trustee, or other fiduciary to invest the funds or money in the person's custody or possession, eligible for investment, in bonds of the home owners' loan corporation or debentures issued by the federal housing administrator, guaranteed as to principal and interest by the United States government.

History: En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; R.C.M. 1947, 35-142(part); amd. Sec. 2476, Ch. 56, L. 2009.

72-31-103. Validation of fiduciary sales. All sales, provided no action is pending on July 1, 1973, to set aside such deed or conveyance, by trustees, executors, administrators, and guardians which previous to January 1, 1973, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's, or guardian's deed or conveyance to such purchaser and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if executed on July 1, 1973, or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent, or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator, or guardian shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 81, L. 1973; R.C.M. 1947, 91-4328.

Part 2
Statutory Form Power of Attorney Act (Renumbered and Repealed)

72-31-201. Repealed. Sec. 49, Ch. 109, L. 2011.

History: En. Sec. 1, Ch. 580, L. 1991; amd. Sec. 113, Ch. 494, L. 1993; amd. Sec. 94, Ch. 51, L. 1999; amd. Sec. 1, Ch. 159, L. 2005.

72-31-202. Renumbered 72-31-224. Code Commissioner, 1993.

72-31-203. Renumbered 72-31-225. Code Commissioner, 1993.

72-31-204. Renumbered 72-31-226. Code Commissioner, 1993.

72-31-205. Renumbered 72-31-228. Code Commissioner, 1993.

72-31-206. Renumbered 72-31-229. Code Commissioner, 1993.

72-31-207. Renumbered 72-31-230. Code Commissioner, 1993.

72-31-208. Renumbered 72-31-231. Code Commissioner, 1993.

72-31-209. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 9, Ch. 580, L. 1991.

72-31-210. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 10, Ch. 580, L. 1991.

72-31-211. Renumbered 72-31-232. Code Commissioner, 1993.

72-31-212. Renumbered 72-31-233. Code Commissioner, 1993.

72-31-213. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 13, Ch. 580, L. 1991.

72-31-214. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 14, Ch. 580, L. 1991.

72-31-215. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 15, Ch. 580, L. 1991.

72-31-216. Repealed. Sec. 134, Ch. 494, L. 1993.
History: En. Sec. 16, Ch. 580, L. 1991.

72-31-217 through 72-31-221 reserved.

72-31-222. Renumbered 72-31-304. Code Commissioner, 2011.

72-31-223. Renumbered 72-31-338. Code Commissioner, 2011.

72-31-224. Renumbered 72-31-339. Code Commissioner, 2011.

72-31-225. Renumbered 72-31-340. Code Commissioner, 2011.

72-31-226. Renumbered 72-31-341. Code Commissioner, 2011.

72-31-227. Renumbered 72-31-342. Code Commissioner, 2011.

72-31-228. Renumbered 72-31-343. Code Commissioner, 2011.

72-31-229. Renumbered 72-31-344. Code Commissioner, 2011.

72-31-230. Renumbered 72-31-345. Code Commissioner, 2011.

72-31-231. Renumbered 72-31-346. Code Commissioner, 2011.

72-31-232. Renumbered 72-31-347. Code Commissioner, 2011.

72-31-233. Renumbered 72-31-348. Code Commissioner, 2011.

72-31-234. Renumbered 72-31-349. Code Commissioner, 2011.

72-31-235. Renumbered 72-31-350. Code Commissioner, 2011.

72-31-236. Renumbered 72-31-351. Code Commissioner, 2011.

72-31-237. Repealed. Sec. 49, Ch. 109, L. 2011.
History: En. Sec. 129, Ch. 494, L. 1993.

72-31-238. Renumbered 72-31-365. Code Commissioner, 2011.

Part 3
Uniform Power of Attorney Act

72-31-301. Short title. This part may be cited as the "Uniform Power of Attorney Act".
History: En. Sec. 1, Ch. 109, L. 2011.

72-31-302. Definitions. As used in this part, the following definitions apply:

(1) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.

(2) "Durable", with respect to a power of attorney, means not terminated by the principal's incapacity.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Good faith" means honesty in fact.

(5) "Incapacity" means inability of an individual to manage property or business affairs because the individual:

(a) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(b) is:

(i) missing; or

(ii) outside the United States and unable to return.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(8) (a) "Presently exercisable general power of appointment", with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period.

(b) The term does not include a power exercisable in a fiduciary capacity or only by will.

(9) "Principal" means an individual who grants authority to an agent in a power of attorney.

(10) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(11) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

History: En. Sec. 2, Ch. 109, L. 2011.

72-31-303. Applicability. This part applies to all powers of attorney except:

(1) a power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(2) a power to make health care decisions;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(4) a power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

History: En. Sec. 3, Ch. 109, L. 2011.

72-31-304. Power of attorney is durable. A power of attorney created under this part is durable unless it expressly provides that it is terminated by the incapacity of the principal.

History: En. Sec. 114, Ch. 494, L. 1993; amd. Sec. 28, Ch. 109, L. 2011; Sec. 72-31-222, MCA 2009; redes. 72-31-304 by Code Commissioner, 2011.

Cross-References

Bases for civil actions, 27-1-104.

72-31-305. Execution of power of attorney. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

History: En. Sec. 4, Ch. 109, L. 2011.

72-31-306. Validity of power of attorney. (1) A power of attorney executed in this state on or after October 1, 2011, is valid if its execution complies with 72-31-305.

(2) A power of attorney executed in this state before October 1, 2011, is valid if its execution complied with the law of this state as it existed at the time of execution.

(3) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(a) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to 72-31-307; or

(b) the requirements for a military power of attorney pursuant to 10 U.S.C. 1044b.

(4) Except as otherwise provided by statute other than this part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

History: En. Sec. 5, Ch. 109, L. 2011.

72-31-307. Meaning and effect of power of attorney. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

History: En. Sec. 6, Ch. 109, L. 2011.

72-31-308. Nomination of conservator or guardian — relation of agent to court-appointed fiduciary. (1) In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(2) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

History: En. Sec. 7, Ch. 109, L. 2011.

72-31-309. When power of attorney effective. (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(a) a physician that the principal is incapacitated within the meaning of 72-31-302(5)(a); or

(b) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of 72-31-302(5)(b).

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and applicable regulations to obtain access to the principal's health care information and communicate with the principal's health care provider.

History: En. Sec. 8, Ch. 109, L. 2011.

72-31-310. Termination of power of attorney or agent's authority. (1) A power of attorney terminates when:

(a) the principal dies;

(b) the principal becomes incapacitated if the power of attorney is not durable;

(c) the principal revokes the power of attorney;

(d) the power of attorney provides that it terminates;

(e) the purpose of the power of attorney is accomplished; or

(f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority terminates when:

(a) the principal revokes the authority;

(b) the agent dies, becomes incapacitated, or resigns;

(c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation unless the power of attorney otherwise provides; or

(d) the power of attorney terminates.

(3) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (2), notwithstanding a lapse of time since the execution of the power of attorney.

(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

History: En. Sec. 9, Ch. 109, L. 2011.

72-31-311 through 72-31-315 reserved.

72-31-316. Coagents or successor agents. (1) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

(a) has the same authority as that granted to the original agent; and

(b) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except as otherwise provided in the power of attorney and subsection (4), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(4) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action.

History: En. Sec. 10, Ch. 109, L. 2011.

72-31-317. Reimbursement and compensation of agent. Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

History: En. Sec. 11, Ch. 109, L. 2011.

72-31-318. Agent's acceptance. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

History: En. Sec. 12, Ch. 109, L. 2011.

72-31-319. Agent's duties. (1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(a) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(b) act in good faith; and

(c) act only within the scope of authority granted in the power of attorney.

(2) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(a) act loyally for the principal's benefit;

(b) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(c) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

(d) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(e) cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and

(f) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(i) the value and nature of the principal's property;

(ii) the principal's foreseeable obligations and need for maintenance;

(iii) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

(iv) eligibility for a benefit, a program, or assistance under a statute or regulation.

(3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(7) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

History: En. Sec. 13, Ch. 109, L. 2011.

72-31-320. Exoneration of agent. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

History: En. Sec. 14, Ch. 109, L. 2011.

72-31-321. Judicial relief. (1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(a) the principal or the agent;

(b) a guardian, conservator, or other fiduciary acting for the principal;

(c) a person authorized to make health care decisions for the principal;

(d) the principal's spouse, parent, or descendant;

(e) an individual who would qualify as a presumptive heir of the principal;

(f) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(g) a governmental agency having regulatory authority to protect the welfare of the principal;

(h) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(i) a person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

History: En. Sec. 15, Ch. 109, L. 2011.

72-31-322. Agent's liability. An agent that violates this part is liable to the principal or the principal's successors in interest for the amount required to:

(1) restore the value of the principal's property to what it would have been had the violation not occurred; and

(2) reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

History: En. Sec. 16, Ch. 109, L. 2011.

72-31-323. Agent's resignation — notice. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(1) to the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(2) if there is no person described in subsection (1), to:

(a) the principal's caregiver;

(b) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(c) a governmental agency having authority to protect the welfare of the principal.

History: En. Sec. 17, Ch. 109, L. 2011.

72-31-324. Acceptance of and reliance upon acknowledged power of attorney. (1) For purposes of 72-31-325 and this section, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under 72-31-305 that the signature is genuine.

(3) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

(4) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(a) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;

(b) an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(c) an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(5) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

(6) For purposes of 72-31-325 and this section, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

History: **En. Sec. 18, Ch. 109, L. 2011.**

72-31-325. Liability for refusal to accept acknowledged power of attorney. (1) Except as otherwise provided in subsection (2):

(a) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under 72-31-324(4) no later than 7 business days after presentation of the power of attorney for acceptance;

(b) if a person requests a certification, a translation, or an opinion of counsel under 72-31-324(4), the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation, or opinion of counsel; and

(c) a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(c) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) a request for a certification, a translation, or an opinion of counsel under 72-31-324(4) is refused;

(e) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under 72-31-324(4) has been requested or provided; or

(f) the person makes or has actual knowledge that another person has made a report to the local office of the department of public health and human services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(a) a court order mandating acceptance of the power of attorney; and

(b) liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

History: **En. Sec. 19, Ch. 109, L. 2011.**

72-31-326. Principles of law and equity. Unless displaced by a provision of this part, the principles of law and equity supplement this part.

History: **En. Sec. 20, Ch. 109, L. 2011.**

72-31-327. Laws applicable to financial institutions and entities. This part does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this part.

History: **En. Sec. 21, Ch. 109, L. 2011.**

72-31-328. Remedies under other law. The remedies under this part are not exclusive and do not abrogate any right or remedy under the law of this state other than this part.

History: **En. Sec. 22, Ch. 109, L. 2011.**

72-31-329 through 72-31-335 reserved.

72-31-336. Authority that requires specific grant — grant of general authority. (1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) create, amend, revoke, or terminate an inter vivos trust;

(b) make a gift;

(c) create or change rights of survivorship;

(d) create or change a beneficiary designation;

(e) delegate authority granted under the power of attorney;

(f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) exercise fiduciary powers that the principal has authority to delegate; or

(h) disclaim property, including a power of appointment.

(2) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent or in an individual to whom the agent owes a legal obligation of support an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(3) Subject to subsections (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in 72-31-339 through 72-31-351.

(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to 72-31-352.

(5) Subject to subsections (1), (2), and (4), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(7) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

History: **En. Sec. 23, Ch. 109, L. 2011.**

72-31-337. Incorporation of authority. (1) An agent has authority described in 72-31-336, 72-31-339 through 72-31-352, and this section if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in 72-31-339 through 72-31-352 or cites the section in which the authority is described.

(2) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in 72-31-339 through 72-31-352 or a citation to a section of 72-31-339 through 72-31-352 incorporates the entire section as if it were set out in full in the power of attorney.

(3) A principal may modify authority incorporated by reference.

History: **En. Sec. 24, Ch. 109, L. 2011.**

72-31-338. Construction of authority generally. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates a subject described in 72-31-339 through 72-31-352 or that grants to an agent authority to do all acts that a principal could do pursuant to 72-31-336(3), a principal authorizes the agent, with respect to that subject, to:

(1) demand, receive, and obtain, by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, file, and record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized by the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;

(7) prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

(8) communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality on behalf of the principal;

(9) access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

(10) do any other lawful act with respect to the subject and all property related to the subject.

History: En. Sec. 115, Ch. 494, L. 1993; amd. Sec. 29, Ch. 109, L. 2011; Sec. 72-31-223, MCA 2009; redes. 72-31-338 by Code Commissioner, 2011.

72-31-339. Real property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(2) sell, exchange, convey, with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce, by litigation or otherwise, a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

(5) manage or conserve an interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including:

(a) insuring against a liability or casualty or other loss;

(b) obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;

(c) paying, assessing, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(d) purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

(6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has or claims to have an interest or right;

(7) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(a) selling or otherwise disposing of them;

(b) exercising or selling an option, right of conversion, or similar right with respect to them; and

(c) exercising any voting rights in person or by proxy;

(8) change the form of title of an interest in or right incident to real property; and

(9) dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.

History: En. Sec. 2, Ch. 580, L. 1991; amd. Sec. 116, Ch. 494, L. 1993; Sec. 72-31-202, MCA 1991; redes. 72-31-224 by Code Commissioner, 1993; amd. Sec. 30, Ch. 109, L. 2011; Sec. 72-31-224, MCA 2009; redes. 72-31-339 by Code Commissioner, 2011.

Cross-References

Transfers of real property, Title 70, ch. 20.

72-31-340. Tangible personal property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, representations, or warranties, quitclaim, release, surrender, create a security interest in, grant options concerning, lease, sublease, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce, by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property;

(5) manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(a) insuring against liability or casualty or other loss;

(b) obtaining or regaining possession or protecting the property or interest, by litigation or otherwise;

(c) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(d) moving the property from place to place;

(e) storing the property for hire or on a gratuitous bailment; and

(f) using and making repairs, alterations, or improvements to the property; and

(6) change the form of title of an interest in tangible personal property.

History: En. Sec. 3, Ch. 580, L. 1991; amd. Sec. 117, Ch. 494, L. 1993; Sec. 72-31-203, MCA 1991; redes. 72-31-225 by Code Commissioner, 1993; amd. Sec. 31, Ch. 109, L. 2011; Sec. 72-31-225, MCA 2009; redes. 72-31-340 by Code Commissioner, 2011.

Cross-References

Transfers of personal property — gifts, Title 70, ch. 3.

72-31-341. Stocks and bonds. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

(1) buy, sell, and exchange stocks and bonds;

(2) establish, continue, modify, or terminate an account with respect to stocks and bonds;

(3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(4) receive certificates and other evidences of ownership with respect to stocks and bonds; and

(5) exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

History: En. Sec. 4, Ch. 580, L. 1991; amd. Sec. 118, Ch. 494, L. 1993; Sec. 72-31-204, MCA 1991; redes. 72-31-226 by Code Commissioner, 1993; amd. Sec. 32, Ch. 109, L. 2011; Sec. 72-31-226, MCA 2009; redes. 72-31-341 by Code Commissioner, 2011.

72-31-342. Commodities and options. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

(2) establish, continue, modify, and terminate option accounts.

History: En. Sec. 119, Ch. 494, L. 1993; amd. Sec. 33, Ch. 109, L. 2011; Sec. 72-31-227, MCA 2009; redes. 72-31-342 by Code Commissioner, 2011.

72-31-343. Banks and other financial institutions. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

(1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) receive statements of account, vouchers, notices, and similar documents from a financial institution and to act with respect to them;

(6) enter a safe deposit box or vault and withdraw or add to the contents;

(7) borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(9) receive for the principal and act upon a sight draft, warehouse receipt, other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(11) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

History: En. Sec. 5, Ch. 580, L. 1991; amd. Sec. 120, Ch. 494, L. 1993; Sec. 72-31-205, MCA 1991; redes. 72-31-228 by Code Commissioner, 1993; amd. Sec. 34, Ch. 109, L. 2011; Sec. 72-31-228, MCA 2009; redes. 72-31-343 by Code Commissioner, 2011.

Cross-References

Deposit in name of minor, 32-1-444.

72-31-344. Operation of entity or business. Subject to the terms of a document or an agreement governing an entity or an entity ownership interest and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(1) operate, buy, sell, enlarge, reduce, and terminate an ownership interest;

(2) perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

(3) enforce the terms of an ownership agreement;

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(5) exercise in person or by proxy or enforce, by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;

(6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

(7) with respect to an entity or business owned solely by the principal:

(a) continue, modify, renegotiate, extend, and terminate a contract made by or with respect to the entity or business before execution of the power of attorney;

(b) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) the amount and types of insurance carried; and

(v) the mode of engaging, compensating, and dealing with its employees, accountants, attorneys, or other advisors;

(c) change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

(d) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

(8) put additional capital into an entity or business in which the principal has an interest;

(9) join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(10) sell or liquidate all or part of an entity or business;

(11) establish the value of an entity or business under a buyout agreement to which the principal is a party;

(12) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

(13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

History: En. Sec. 6, Ch. 580, L. 1991; amd. Sec. 121, Ch. 494, L. 1993; Sec. 72-31-206, MCA 1991; redes. 72-31-229 by Code Commissioner, 1993; amd. Sec. 35, Ch. 109, L. 2011; Sec. 72-31-229, MCA 2009; redes. 72-31-344 by Code Commissioner, 2011.

72-31-345. Insurance and annuities. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and mode of payment;

(3) pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) apply for and receive a loan secured by a contract of insurance or annuity;

(5) surrender and receive the cash surrender value on a contract of insurance or annuity;

(6) exercise an election;

(7) exercise investment power available under a contract of insurance or annuity;

(8) change the manner of paying premiums on a contract of insurance or annuity;

(9) change or convert the type of insurance or annuity with respect to which the principal has or claims to have a power described in this section;

(10) apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity; and

(12) pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

History: **En. Sec. 7, Ch. 580, L. 1991; amd. Sec. 122, Ch. 494, L. 1993; Sec. 72-31-207, MCA 1991; redes. 72-31-230 by Code Commissioner, 1993; amd. Sec. 36, Ch. 109, L. 2011; Sec. 72-31-230, MCA 2009; redes. 72-31-345 by Code Commissioner, 2011.**

Cross-References

Insurance, Title 33.

72-31-346. Estates, trusts, and other beneficial interests. (1) In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to an estate, trust, or other beneficial interest authorizes the agent to:

(a) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from the fund;

(b) demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled by reason of the fund, by litigation or otherwise;

(c) exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(d) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

(f) conserve, invest, disburse, or use anything received for an authorized purpose; and

(g) transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

History: **En. Sec. 8, Ch. 580, L. 1991; amd. Sec. 123, Ch. 494, L. 1993; Sec. 72-31-208, MCA 1991; redes. 72-31-231 by Code Commissioner, 1993; amd. Sec. 37, Ch. 109, L. 2011; Sec. 72-31-231, MCA 2009; redes. 72-31-346 by Code Commissioner, 2011.**

72-31-347. Claims and litigation. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

(5) submit to alternative dispute resolution, settle, and propose or accept a compromise;

(6) waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, and receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization,

receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

(8) pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

(9) receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

History: **En. Sec. 11, Ch. 580, L. 1991; amd. Sec. 124, Ch. 494, L. 1993; Sec. 72-31-211, MCA 1991; redes. 72-31-232 by Code Commissioner, 1993; amd. Sec. 38, Ch. 109, L. 2011; Sec. 72-31-232, MCA 2009; redes. 72-31-347 by Code Commissioner, 2011.**

72-31-348. Personal and family maintenance. (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(a) perform the acts necessary to maintain the customary standard of living of the principal and the following individuals, whether living when the power of attorney is executed or later born:

(i) the principal's children;

(ii) other individuals legally entitled to be supported by the principal; and

(iii) the individuals whom the principal has customarily supported or indicated the intent to support;

(b) make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(c) provide living quarters for the individuals described in subsection (1)(a) by:

(i) purchase, lease, or other contract; or

(ii) paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises owned by the principal or occupied by those individuals;

(d) provide for normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subsection (1)(a);

(e) pay expenses for necessary health care and custodial care for the individuals described in subsection (1)(a);

(f) act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(g) continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subsection (1)(a);

(h) maintain credit and debit accounts for the convenience of the individuals described in subsection (1)(a) and open new accounts; and

(i) continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon nor limited by authority that an agent may or may not have with respect to gifts under this part.

History: **En. Sec. 12, Ch. 580, L. 1991; amd. Sec. 125, Ch. 494, L. 1993; Sec. 72-31-212, MCA 1991; redes. 72-31-233 by Code Commissioner, 1993; amd. Sec. 39, Ch. 109, L. 2011; Sec. 72-31-233, MCA 2009; redes. 72-31-348 by Code Commissioner, 2011.**

72-31-349. Benefits from governmental programs or civil or military service. (1) In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation, including social security, medicare, and medicaid.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(a) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in 72-31-348(1)(a), and for shipment of their household effects;

(b) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(d) prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled to receive under a statute or regulation;

(e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(f) receive the financial proceeds of a claim described in subsection (2)(d) and conserve, invest, disburse, or use for a lawful purpose anything so received.

History: En. Sec. 126, Ch. 494, L. 1993; amd. Sec. 40, Ch. 109, L. 2011; Sec. 72-31-234, MCA 2009; redes. 72-31-349 by Code Commissioner, 2011.

72-31-350. Retirement plans. (1) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

(a) an individual retirement account under section 408 of the Internal Revenue Code, 26 U.S.C. 408;

(b) a Roth individual retirement account under section 408A of the Internal Revenue Code, 26 U.S.C. 408A;

(c) a deemed individual retirement account under section 408(q) of the Internal Revenue Code, 26 U.S.C. 408(q);

(d) an annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(f) a deferred compensation plan under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and

(g) a nonqualified deferred compensation plan under section 409A of the Internal Revenue Code, 26 U.S.C. 409A.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(a) select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(b) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(c) establish a retirement plan in the principal's name;

(d) make contributions to a retirement plan;

(e) exercise investment powers available under a retirement plan; and

(f) borrow from, sell assets to, and purchase assets from a retirement plan.

History: En. Sec. 127, Ch. 494, L. 1993; amd. Sec. 41, Ch. 109, L. 2011; Sec. 72-31-235, MCA 2009; redes. 72-31-350 by Code Commissioner, 2011.

72-31-351. Taxes. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under section 2032A of the Internal Revenue Code, 26 U.S.C. 2032A, closing agreements, and any power of attorney

required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service or other taxing authority.

History: En. Sec. 128, Ch. 494, L. 1993; amd. Sec. 42, Ch. 109, L. 2011; Sec. 72-31-236, MCA 2009; redes. 72-31-351 by Code Commissioner, 2011.

Cross-References

Taxation, Title 15.

72-31-352. Gifts. (1) In this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act, Title 72, chapter 26, and a tuition savings account or prepaid tuition plan under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(a) make outright to or for the benefit of a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503(b) of the Internal Revenue Code, 26 U.S.C. 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) consent, pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(3) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

(a) the value and nature of the principal's property;

(b) the principal's foreseeable obligations and need for maintenance;

(c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

(d) eligibility for a benefit, a program, or assistance under a statute or regulation; and

(e) the principal's personal history of making or joining in making gifts.

History: En. Sec. 43, Ch. 109, L. 2011.

72-31-353. Statutory form power of attorney. A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this part.

MONTANA STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Title 72, chapter 31, part 3.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I ....
(Name of Principal)
name the following person as my agent:
Name of Agent: ....
Agent's Address:.......................................
Agent's Telephone Number:.............................

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:
Name of Successor Agent:..............................
Successor Agent's Address:............................
Successor Agent's Telephone Number:................

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:
Name of Second Successor Agent:.....................
Second Successor Agent's Address:.....................
Second Successor Agent's Telephone Number:...............

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 3:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

(...) Real Property
(...) Tangible Personal Property
(...) Stocks and Bonds
(...) Commodities and Options
(...) Banks and Other Financial Institutions
(...) Operation of Entity or Business
(...) Insurance and Annuities
(...) Estates, Trusts, and Other Beneficial Interests
(...) Claims and Litigation
(...) Personal and Family Maintenance
(...) Benefits from Governmental Programs or Civil or Military Service
(...) Retirement Plans
(...) Taxes
(...) All Preceding Subjects

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

....

....

....

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator or guardian of my estate: ....
Nominee's Address:...
Nominee's Telephone Number:...........................
Name of Nominee for guardian of my person: ....
Nominee's Address: ....
Nominee's Telephone Number: ....

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

....
Your Signature Date

....
Your Name Printed

....
Your Address

....
Your Telephone Number

State of ....
County of.............................
This document was acknowledged before me on
.......................,
(Date)
by..................................
(Name of Principal)
.... (Seal, if any)
Signature of Notary
My commission expires:......................
This document prepared by:
....

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney; and

(4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) act loyally for the principal's benefit;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) death of the principal;

(2) the principal's revocation of the power of attorney or your authority;

(3) the occurrence of a termination event stated in the power of attorney;

(4) the purpose of the power of attorney is fully accomplished; or

(5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 3. If you violate the Uniform Power of Attorney Act, Title 72, chapter 31, part 3, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

History: En. Sec. 44, Ch. 109, L. 2011.

72-31-354. Agent's certification. The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of ....

County of..................................

I, ... (Name of Agent), certify under penalty of perjury that ....(Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated ....

I further certify that to my knowledge:

(1) the principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;

(2) if the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) ....

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

....

Agent's Signature Date

....
Agent's Name Printed
....
Agent's Address
....
Agent's Telephone Number
This document was acknowledged before me on............,
(Date)
by...............................
(Name of Agent) .... (Seal, if any)
Signature of Notary
My commission expires: ....
This document prepared by:
....

History: **En. Sec. 45, Ch. 109, L. 2011.**

72-31-355 through 72-31-364 reserved.

72-31-365. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

History: **En. Sec. 130, Ch. 494, L. 1993; amd. Sec. 46, Ch. 109, L. 2011; Sec. 72-31-238, MCA 2009; redes. 72-31-365 by Code Commissioner, 2011.**

72-31-366. Relation to Electronic Signatures in Global and National Commerce Act. This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: **En. Sec. 47, Ch. 109, L. 2011.**

72-31-367. Effect on existing powers of attorney. Except as otherwise provided in this part, on October 1, 2011:

(1) this part applies to a power of attorney created before, on, or after October 1, 2011, unless it is a health care power of attorney;

(2) this part applies to a judicial proceeding concerning a power of attorney commenced on or after October 1, 2011, unless it is a health care power of attorney;

(3) this part applies to a judicial proceeding concerning a power of attorney commenced before October 1, 2011, unless the court finds that application of a provision of this part would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) an act done before October 1, 2011, is not affected by this part.

History: **En. Sec. 48, Ch. 109, L. 2011.**

Part 4

Revised Uniform Fiduciary Access to Digital Assets Act

72-31-401. Short title. This part may be cited as the "Revised Uniform Fiduciary Access to Digital Assets Act".

History: **En. Sec. 1, Ch. 286, L. 2017.**

72-31-402. Definitions. As used in this part:

(1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) "Agent" means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

(3) "Carries" means engages in the transmission of an electronic communication.

(4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) "Conservator" means a person appointed by a court to manage the estate of a living individual.

(6) "Content of an electronic communication" means information concerning the substance or meaning of the communication which:

(a) has been sent or received by a user;

(b) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(c) is not readily accessible to the public.

(7) "Court" means the district court having jurisdiction in matters relating to the content of this part.

(8) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(10) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic communication" has the meaning set forth in 18 U.S.C. 2510(12), as amended.

(13) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) "Fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee.

(15) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(18) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this part.

(19) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.

(20) "Principal" means an individual who grants authority to an agent in a power of attorney.

(21) "Protected person" means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. 2510(14), as amended.

(24) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

(26) "User" means a person that has an account with a custodian.

(27) "Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

History: En. Sec. 2, Ch. 286, L. 2017.

72-31-403. User direction for disclosure of digital assets. (1) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an online tool to give direction under subsection (1) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(3) A user's direction under subsection (1) or (2) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

History: En. Sec. 3, Ch. 286, L. 2017.

72-31-404. Terms-of-service agreement. (1) This part does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(2) This part does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under 72-31-403.

History: En. Sec. 4, Ch. 286, L. 2017.

72-31-405. Procedure for disclosing digital assets. (1) When disclosing digital assets of a user under this part, the custodian may at its sole discretion:

(a) grant a fiduciary or designated recipient full access to the user's account;

(b) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(c) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this part.

(3) A custodian need not disclose under this part a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a custodian to disclose under this part some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(a) a subset limited by date of the user's digital assets;

(b) all of the user's digital assets to the fiduciary or designated recipient;

(c) none of the user's digital assets; or

(d) all of the user's digital assets to the court for review in camera.

History: En. Sec. 5, Ch. 286, L. 2017.

72-31-406. Disclosure of content of electronic communications of deceased user. If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letter of appointment of the representative or a collection of personal property affidavit or court order;

(4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) if requested by the custodian:

(a) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user; or

(c) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subsection (5)(a);

(ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. 2701 et seq., as amended, 47 U.S.C. 222, as amended, or other applicable law;

(iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

History: **En. Sec. 6, Ch. 286, L. 2017.**

72-31-407. Disclosure of other digital assets of deceased user. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letter of appointment of the representative or a collection of personal property affidavit or court order; and

(4) if requested by the custodian:

(a) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user;

(c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(d) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subsection (4)(a); or

(ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

History: **En. Sec. 7, Ch. 286, L. 2017.**

72-31-408. Disclosure of content of electronic communications of principal. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

(a) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) evidence linking the account to the principal.

History: **En. Sec. 8, Ch. 286, L. 2017.**

72-31-409. Disclosure of other digital assets of principal. Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

(a) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) evidence linking the account to the principal.

History: En. Sec. 9, Ch. 286, L. 2017.

72-31-410. Disclosure of digital assets held in trust when trustee is original user. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

History: En. Sec. 10, Ch. 286, L. 2017.

72-31-411. Disclosure of contents of electronic communications held in trust when trustee not original user. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under 72-38-1013 that includes consent to disclosure of the content of electronic communications to the trustee;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

History: En. Sec. 11, Ch. 286, L. 2017.

72-31-412. Disclosure of other digital assets held in trust when trustee not original user. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under 72-38-1013;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

History: En. Sec. 12, Ch. 286, L. 2017.

72-31-413. Disclosure of digital assets to conservator of protected person. (1) After an opportunity for a hearing under 72-5-408, the court may grant a conservator access to the digital assets of a protected person.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(a) a written request for disclosure in physical or electronic form;

(b) a certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(c) if requested by the custodian:

(i) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(ii) evidence linking the account to the protected person.

(3) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

History: En. Sec. 13, Ch. 286, L. 2017.

72-31-414. Fiduciary duty and authority. (1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(a) the duty of care;

(b) the duty of loyalty; and

(c) the duty of confidentiality.

(2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(a) except as otherwise provided in 72-31-405, is subject to the applicable terms of service;

(b) is subject to other applicable law, including copyright law;

(c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(d) may not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including 45-6-311.

(5) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(a) has the right to access the property and any digital asset stored in it; and

(b) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including 45-6-311.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(a) if the user is deceased, a certified copy of the death certificate of the user;

(b) a certified copy of the letter of appointment of the representative or a collection of personal property affidavit or court order, court order, power of attorney, or trust giving the fiduciary authority over the account; and

(c) if requested by the custodian:

(i) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) evidence linking the account to the user; or

(iii) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subsection (7)(c)(i).

History: En. Sec. 14, Ch. 286, L. 2017.

72-31-415. Custodian compliance and immunity. (1) Not later than 60 days after receipt of the information required under 72-31-406 through 72-31-414, a custodian shall comply with a request under this part from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(2) An order under subsection (1) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. 2702, as amended.

(3) A custodian may notify the user that a request for disclosure or to terminate an account was made under this part.

(4) A custodian may deny a request under this part from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) This part does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this part to obtain a court order which:

(a) specifies that an account belongs to the protected person or principal;

(b) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(c) contains a finding required by law other than this part.

(6) (a) Except as provided in subsection (6)(b), a custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this part.

(b) The immunity in subsection (6)(a) does not apply to actions against the state or a political subdivision of the state.

History: En. Sec. 15, Ch. 286, L. 2017.

72-31-416. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: En. Sec. 16, Ch. 286, L. 2017.

72-31-417. Relation to Electronic Signatures in Global and National Commerce Act. This part modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: En. Sec. 17, Ch. 286, L. 2017.

CHAPTER 32
RESERVED

CHAPTER 33
TRUST CODE
GENERAL PROVISIONS
(Repealed)

Part 1 — General Provisions (Repealed)
Part 2 — Creation and Validity of Trusts Resulting and Constructive Trusts (Repealed)
Part 3 — Restrictions on Voluntary and Involuntary Transfers (Repealed)
Part 4 — Modification and Termination of Trusts (Repealed)
Part 5 — Charitable Trusts (Repealed)
Part 6 — Trustees (Repealed)
Part 7 — Beneficiaries (Repealed)

Part 1
General Provisions
(Repealed)

72-33-101. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 1, Ch. 685, L. 1989.

72-33-102. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 2, Ch. 685, L. 1989.

72-33-103. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 3, Ch. 685, L. 1989.

72-33-104. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 4, Ch. 685, L. 1989.

72-33-105. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 5, Ch. 685, L. 1989.

72-33-106. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 6, Ch. 685, L. 1989.

72-33-107. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 8, Ch. 685, L. 1989.

72-33-108. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 7, Ch. 685, L. 1989; amd. Sec. 1, Ch. 688, L. 1991; amd. Sec. 68, Ch. 18, L. 1995.

Part 2
Creation and Validity of Trusts
Resulting and Constructive Trusts
(Repealed)

72-33-201. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 9, Ch. 685, L. 1989.

72-33-202. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 10, Ch. 685, L. 1989.

72-33-203. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 11, Ch. 685, L. 1989.

72-33-204. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 12, Ch. 685, L. 1989.

72-33-205. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 13, Ch. 685, L. 1989.

72-33-206. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 14, Ch. 685, L. 1989.

72-33-207. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 15, Ch. 685, L. 1989.

72-33-208. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 16, Ch. 685, L. 1989.

72-33-209. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 17, Ch. 685, L. 1989.

72-33-210. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 18, Ch. 685, L. 1989.

72-33-211. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 11, Ch. 290, L. 1999.

72-33-212 through 72-33-215 reserved.

72-33-216. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 19, Ch. 685, L. 1989; amd. Sec. 2477, Ch. 56, L. 2009.**

72-33-217. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 20, Ch. 685, L. 1989; amd. Sec. 2478, Ch. 56, L. 2009.**

72-33-218. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 21, Ch. 685, L. 1989.**

72-33-219. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 22, Ch. 685, L. 1989; amd. Sec. 2479, Ch. 56, L. 2009.**

72-33-220. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 23, Ch. 685, L. 1989.**

Part 3
Restrictions on Voluntary and Involuntary Transfers (Repealed)

72-33-301. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 24, Ch. 685, L. 1989.**

72-33-302. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 25, Ch. 685, L. 1989.**

72-33-303. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 26, Ch. 685, L. 1989.**

72-33-304. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 27, Ch. 685, L. 1989.**

72-33-305. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 28, Ch. 685, L. 1989.**

72-33-306. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 29, Ch. 685, L. 1989; amd. Sec. 2480, Ch. 56, L. 2009.**

Part 4
Modification and Termination of Trusts (Repealed)

72-33-401. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 30, Ch. 685, L. 1989.**

72-33-402. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 31, Ch. 685, L. 1989.**

72-33-403. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 32, Ch. 685, L. 1989.**

72-33-404 and 72-33-405 reserved.

72-33-406. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 33, Ch. 685, L. 1989.**

72-33-407. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 34, Ch. 685, L. 1989.**

72-33-408. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 35, Ch. 685, L. 1989.**

72-33-409. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 36, Ch. 685, L. 1989.**

72-33-410 reserved.

72-33-411. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 37, Ch. 685, L. 1989.**

72-33-412. Repealed. Sec. 162, Ch. 264, L. 2013.
History: **En. Sec. 38, Ch. 685, L. 1989.**

72-33-413. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 39, Ch. 685, L. 1989.

72-33-414. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 40, Ch. 685, L. 1989.

72-33-415. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 41, Ch. 685, L. 1989.

72-33-416. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 42, Ch. 685, L. 1989.

Part 5
Charitable Trusts
(Repealed)

72-33-501. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 43, Ch. 685, L. 1989.

72-33-502. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 44, Ch. 685, L. 1989.

72-33-503. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 45, Ch. 685, L. 1989; amd. Sec. 2481, Ch. 56, L. 2009.

72-33-504. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 46, Ch. 685, L. 1989.

Part 6
Trustees
(Repealed)

72-33-601. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 47, Ch. 685, L. 1989.

72-33-602. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 48, Ch. 685, L. 1989.

72-33-603. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 49, Ch. 685, L. 1989.

72-33-604. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 50, Ch. 685, L. 1989.

72-33-605 through 72-33-610 reserved.

72-33-611. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 51, Ch. 685, L. 1989.

72-33-612. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 52, Ch. 685, L. 1989.

72-33-613. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 53, Ch. 685, L. 1989.

72-33-614 and 72-33-615 reserved.

72-33-616. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 54, Ch. 685, L. 1989.

72-33-617. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 55, Ch. 685, L. 1989.

72-33-618. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 56, Ch. 685, L. 1989.

72-33-619. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 57, Ch. 685, L. 1989.

72-33-620. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 58, Ch. 685, L. 1989.

72-33-621. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 59, Ch. 685, L. 1989.

72-33-622. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 60, Ch. 685, L. 1989.

72-33-623 through 72-33-625 reserved.

72-33-626. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 61, Ch. 685, L. 1989.

72-33-627. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 62, Ch. 685, L. 1989.

72-33-628. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 63, Ch. 685, L. 1989.

72-33-629. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 64, Ch. 685, L. 1989.

72-33-630. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 65, Ch. 685, L. 1989.

72-33-631. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 66, Ch. 685, L. 1989.

72-33-632. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 67, Ch. 685, L. 1989.

Part 7
Beneficiaries
(Repealed)

72-33-701. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 68, Ch. 685, L. 1989; amd. Sec. 34, Ch. 592, L. 1995.

72-33-702. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 69, Ch. 685, L. 1989.

72-33-703. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 70, Ch. 685, L. 1989.

72-33-704. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 71, Ch. 685, L. 1989.

72-33-705. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 72, Ch. 685, L. 1989.

CHAPTER 34
PRINCIPAL AND INCOME

Part 1 — Duties of Trustees (Renumbered and Repealed)

Part 2 — Duties of Trustees of Private Foundations, Charitable Trusts, and Split-Interest Trusts (Repealed)

Part 3 — Powers of Trustees (Repealed)

Part 4 — Montana Uniform Principal and Income Act

72-34-401. Repealed.
72-34-402. Repealed.
72-34-403. Repealed.
72-34-404. Repealed.
72-34-405. Repealed.
72-34-406. Repealed.
72-34-407. Repealed.
72-34-408. Repealed.
72-34-409. Repealed.
72-34-410. Repealed.
72-34-411. Repealed.

72-34-412. Repealed.
72-34-413 through 72-34-415 reserved.
72-34-416. Repealed.
72-34-417 through 72-34-420 reserved.
72-34-421. Short title.
72-34-422. Definitions.
72-34-423. Allocation between principal and income — impartial exercise of discretion.
72-34-424. Adjustments between principal and income.
72-34-425. Notice of proposed action — objections by beneficiary — liability of trustee — proceedings.
72-34-426. Proceedings relating to adjustments — remedy.
72-34-427. Application of part.
72-34-428. Rules applicable after decedent's death or termination of income interest.
72-34-429. Beneficiary's portion of net income — maintenance of records — distribution date.
72-34-430. Beneficiary's entitlement to net income — assets subject to trust — assets subject to successive income interest — termination of income interest.
72-34-431. Allocation of income receipt or disbursement.
72-34-432. Undistributed income — definition — payment to beneficiary.
72-34-433. Allocation of receipts to income or principal — entity defined.
72-34-434. Allocation of amounts received from specified trusts or estates.
72-34-435. Separate accounting records for business or other activity.
72-34-436. Amounts allocated to principal.
72-34-437. Amounts received from rental property allocation.
72-34-438. Interest on obligation to pay money — allocation.
72-34-439. Life insurance policy proceeds — proceeds of contracts insuring against certain losses — allocation.
72-34-440. Insubstantial allocation — allocation of entire amount to principal — exceptions.
72-34-441. Payments characterized as interest or dividend — allocation to income — allocation of other payments — excess allocation to income in order to obtain estate tax marital deduction.
72-34-442. Receipts from liquidating assets — allocation.
72-34-443. Receipts from mineral interests and other natural resources — allocation.
72-34-444. Receipts from sale of timber and related products — allocation.
72-34-445. Increasing income in order to maintain marital deduction.
72-34-446. Transactions in derivatives — allocations of receipts and disbursements — options to buy or sell property — allocation of amounts received or paid.
72-34-447. Payments from collateral financial assets and payments in exchange for interest in asset-backed security — allocation.
72-34-448. Disbursements from income.
72-34-449. Disbursements from principal.
72-34-450. Assets subject to depreciation — transfer from income to principal of portion of net cash receipts.
72-34-451. Transfer from income to principal in anticipation of principal disbursement.
72-34-452. Payment of taxes.
72-34-453. Adjustments between principal and income in certain cases.

Part 5 — Liability of Trustees to Beneficiaries (Repealed)

Part 6 — Montana Uniform Prudent Investor Act (Repealed)

Part 1
Duties of Trustees
(Renumbered and Repealed)

72-34-101. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 73, Ch. 685, L. 1989.

72-34-102. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 74, Ch. 685, L. 1989.

72-34-103. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 75, Ch. 685, L. 1989.

72-34-104. Renumbered 72-34-604. Sec. 14, Ch. 484, L. 2003.

72-34-105. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 77, Ch. 685, L. 1989.

72-34-106. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 78, Ch. 685, L. 1989.

72-34-107. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 79, Ch. 685, L. 1989.

72-34-108. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 80, Ch. 685, L. 1989.

72-34-109. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 81, Ch. 685, L. 1989.

72-34-110. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 82, Ch. 685, L. 1989.

72-34-111. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 83, Ch. 685, L. 1989.

72-34-112. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 84, Ch. 685, L. 1989.

72-34-113. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 85, Ch. 685, L. 1989; amd. Sec. 7, Ch. 290, L. 1999; amd. Sec. 10, Ch. 484, L. 2003.

72-34-114. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 89, Ch. 685, L. 1989; amd. Sec. 8, Ch. 290, L. 1999; amd. Sec. 11, Ch. 484, L. 2003.

72-34-115. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 87, Ch. 685, L. 1989.

72-34-116. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 86, Ch. 685, L. 1989.

72-34-117. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 88, Ch. 685, L. 1989; amd. Sec. 7, Ch. 279, L. 1997.

72-34-118. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 90, Ch. 685, L. 1989.

72-34-119 and 72-34-120 reserved.

72-34-121. Repealed. Sec. 12, Ch. 484, L. 2003.
History: En. Sec. 91, Ch. 685, L. 1989.

72-34-122 and 72-34-123 reserved.

72-34-124. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 92, Ch. 685, L. 1989.

72-34-125. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 93, Ch. 685, L. 1989.

72-34-126. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 94, Ch. 685, L. 1989.

72-34-127. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 95, Ch. 685, L. 1989.

72-34-128. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 96, Ch. 685, L. 1989.

72-34-129. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 97, Ch. 685, L. 1989.

72-34-130. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 98, Ch. 685, L. 1989; amd. Sec. 2482, Ch. 56, L. 2009.

Part 2

Duties of Trustees of Private Foundations, Charitable Trusts, and Split-Interest Trusts (Repealed)

72-34-201. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 99, Ch. 685, L. 1989.

72-34-202. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 100, Ch. 685, L. 1989.

72-34-203. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 101, Ch. 685, L. 1989.

72-34-204. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 102, Ch. 685, L. 1989.

72-34-205. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 103, Ch. 685, L. 1989; amd. Sec. 9, Ch. 290, L. 1999.

72-34-206. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 104, Ch. 685, L. 1989.

72-34-207. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 12, Ch. 290, L. 1999.

Part 3
Powers of Trustees (Repealed)

72-34-301. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 105, Ch. 685, L. 1989.

72-34-302. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 106, Ch. 685, L. 1989.

72-34-303. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 107, Ch. 685, L. 1989.

72-34-304. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 108, Ch. 685, L. 1989.

72-34-305 reserved.

72-34-306. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 109, Ch. 685, L. 1989.

72-34-307. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 110, Ch. 685, L. 1989.

72-34-308. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 111, Ch. 685, L. 1989.

72-34-309. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 112, Ch. 685, L. 1989; amd. Sec. 2, Ch. 289, L. 1993.

72-34-310. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 113, Ch. 685, L. 1989.

72-34-311. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 114, Ch. 685, L. 1989.

72-34-312 through 72-34-315 reserved.

72-34-316. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 115, Ch. 685, L. 1989.

72-34-317. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 116, Ch. 685, L. 1989.

72-34-318. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 117, Ch. 685, L. 1989.

72-34-319. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 118, Ch. 685, L. 1989.

72-34-320. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 119, Ch. 685, L. 1989.

72-34-321. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 120, Ch. 685, L. 1989.

72-34-322. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 121, Ch. 685, L. 1989.

72-34-323. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 122, Ch. 685, L. 1989.

72-34-324 and 72-34-325 reserved.

72-34-326. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 123, Ch. 685, L. 1989.

72-34-327. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 124, Ch. 685, L. 1989.

72-34-328. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 125, Ch. 685, L. 1989.

72-34-329. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 126, Ch. 685, L. 1989.

72-34-330. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 127, Ch. 685, L. 1989.

72-34-331. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 128, Ch. 685, L. 1989.

72-34-332. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 129, Ch. 685, L. 1989.

72-34-333 through 72-34-335 reserved.

72-34-336. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 130, Ch. 685, L. 1989.

72-34-337. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 131, Ch. 685, L. 1989.

72-34-338. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 132, Ch. 685, L. 1989.

72-34-339. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 133, Ch. 685, L. 1989.

72-34-340. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 134, Ch. 685, L. 1989.

72-34-341. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 135, Ch. 685, L. 1989.

72-34-342. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 136, Ch. 685, L. 1989.

72-34-343. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 137, Ch. 685, L. 1989.

Part 4
Montana Uniform Principal and Income Act

72-34-401. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 138, Ch. 685, L. 1989.

72-34-402. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 139, Ch. 685, L. 1989.

72-34-403. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 140, Ch. 685, L. 1989.

72-34-404. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 141, Ch. 685, L. 1989.

72-34-405. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 142, Ch. 685, L. 1989.

72-34-406. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 143, Ch. 685, L. 1989.

72-34-407. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 144, Ch. 685, L. 1989.

72-34-408. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 145, Ch. 685, L. 1989.

72-34-409. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 146, Ch. 685, L. 1989.

72-34-410. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 147, Ch. 685, L. 1989.

72-34-411. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 148, Ch. 685, L. 1989.

72-34-412. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 149, Ch. 685, L. 1989.

72-34-413 through 72-34-415 reserved.

72-34-416. Repealed. Sec. 34, Ch. 506, L. 2003.
History: En. Sec. 150, Ch. 685, L. 1989.

72-34-417 through 72-34-420 reserved.

72-34-421. Short title. This part may be cited as the "Montana Uniform Principal and Income Act".
History: En. Sec. 1, Ch. 506, L. 2003.

72-34-422. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Fiduciary" means a personal representative or a trustee.

(3) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in 72-34-433 through 72-34-447.

(4) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(5) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the trust requires it to be distributed or authorizes it to be distributed in the trustee's discretion.

(6) "Mandatory income interest" means the right of an income beneficiary to receive net income that the trust requires the fiduciary to distribute.

(7) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the accounting period, plus or minus transfers under this chapter to or from income during the accounting period.
History: En. Sec. 2, Ch. 506, L. 2003.

72-34-423. Allocation between principal and income — impartial exercise of discretion. (1) In allocating receipts and disbursements to or between principal and income and with respect to any other matter within the scope of this part, a fiduciary:

(a) shall administer a trust or decedent's estate in accordance with the trust or the will, even if there is a different provision in this part;

(b) may administer a trust or decedent's estate by the exercise of a discretionary power of administration given to the fiduciary by the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this part and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of this part;

(c) shall administer a trust or decedent's estate in accordance with this part if the trust or the will does not contain a different provision or does not give the fiduciary a discretionary power of administration; and

(d) shall add a receipt or charge a disbursement to principal to the extent that the trust or the will and this part do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) In exercising a discretionary power of administration regarding a matter within the scope of this part, whether granted by a trust, a will, or this part, including the trustee's power to adjust under 72-34-424(1), the fiduciary shall administer the trust or decedent's estate impartially, except to the extent that the trust or the will expresses an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion in accordance with this part is presumed to be fair and reasonable to all beneficiaries.

History: **En. Sec. 3, Ch. 506, L. 2003.**

72-34-424. Adjustments between principal and income. (1) Subject to subsection (2), a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(a) the trustee invests and manages trust assets under the prudent investor rule under 72-38-901;

(b) the trust describes the amount that must or may be distributed to a beneficiary by referring to the trust's income; and

(c) the trustee determines, after applying the rules in 72-34-423(1) and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with 72-34-423(2).

(2) A trustee may not make an adjustment between principal and income in any of the following circumstances:

(a) when it would diminish the income interest in a trust:

(i) that requires all of the income to be paid at least annually to a spouse; and

(ii) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part;

(b) when it would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) when it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) when it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are set aside;

(e) when possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) when possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(g) when the trustee is a beneficiary of the trust.

(3) If subsection (2)(e), (2)(f), or (2)(g) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

(4) A trustee may release the entire power conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income in either of the following circumstances:

(a) if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsections (2)(a) through (2)(f); or

(b) if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (2).

(5) A release under subsection (4) may be permanent or for a specified period, including a period measured by the life of an individual.

(6) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subsection (1).

(7) In deciding whether and to what extent to exercise the power to make adjustments under this section, the trustee may consider, but is not limited to considering, any of the following:

(a) the nature, purpose, and expected duration of the trust;

(b) the intent of the settlor;

(c) the identity and circumstances of the beneficiaries;

(d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(e) the assets held in the trust, the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, the extent to which an asset is used by a beneficiary, and whether an asset was purchased by the trustee or received from the settlor;

(f) the net amount allocated to income under other statutes and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(g) whether and to what extent the trust gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; or

(i) the anticipated tax consequences of an adjustment.

(8) Nothing in this part or this section is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

History: En. Sec. 4, Ch. 506, L. 2003; amd. Sec. 153, Ch. 264, L. 2013.

72-34-425. Notice of proposed action — objections by beneficiary — liability of trustee — proceedings. (1) A trustee may give a notice of proposed action regarding a matter governed by this part as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(3) A notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) The notice of proposed action must state that it is given pursuant to this section and must state all of the following:

(a) the name and mailing address of the trustee;

(b) the name and telephone number of a person who may be contacted for additional information;

(c) a description of the action proposed to be taken and an explanation of the reasons for the action;

(d) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action; and

(e) the date on or after which the proposed action may be taken or is effective.

(5) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(6) A trustee is not liable to a beneficiary for an action regarding a matter governed by this part if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(7) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

History: **En. Sec. 5, Ch. 506, L. 2003.**

72-34-426. Proceedings relating to adjustments — remedy. In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under 72-34-424, the sole remedy is to direct, deny, or revise an adjustment between principal and income.

History: **En. Sec. 6, Ch. 506, L. 2003.**

72-34-427. Application of part. This part applies to every trust or decedent's estate existing on or after October 1, 2003, except as otherwise expressly provided in the trust or will or in this part.

History: **En. Sec. 7, Ch. 506, L. 2003.**

72-34-428. Rules applicable after decedent's death or termination of income interest. After the decedent's death, in the case of a decedent's estate, or after an income interest in a trust ends, the following rules apply:

(1) If property is specifically given to a beneficiary, by will or trust, the fiduciary of the estate or of the terminating income interest shall distribute the net income and principal receipts to the beneficiary who is to receive the property, subject to the following rules:

(a) the net income and principal receipts from the specifically given property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether the amounts accrued or became due before, on, or after the decedent's death or an income interest in a trust ends and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed; and

(b) the fiduciary may not reduce income and principal receipts from the specifically given property on account of a payment described in 72-34-447 to the extent that the will or the trust requires payment from other property or to the extent that the fiduciary recovers the payment from a third person.

(2) The fiduciary shall distribute to a beneficiary who receives a pecuniary amount, whether outright or in trust, the interest or any other amount provided by the will, the trust, or 72-3-913 from the remaining net income determined under subsection (3) of this section or from principal to the extent that net income is insufficient.

(3) The fiduciary shall determine the remaining net income of the decedent's estate or terminating income interest as provided in this part and by doing the following:

(a) including in net income all income from property used to discharge liabilities;

(b) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on death taxes, except that the fiduciary may pay these expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of these expenses from income will not cause the reduction or loss of the deduction;

(c) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the trust, or Title 72, chapter 16, part 6.

(4) After distributions required by subsection (2), the fiduciary shall distribute the remaining net income determined under subsection (3) in the manner provided in 72-34-429 to all other beneficiaries.

History: **En. Sec. 8, Ch. 506, L. 2003.**

72-34-429. Beneficiary's portion of net income — maintenance of records — distribution date. (1) Each beneficiary described in 72-34-428(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution dates and without reducing the values by any unpaid principal obligations.

(2) If a fiduciary does not distribute all of the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(3) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

History: **En. Sec. 9, Ch. 506, L. 2003.**

72-34-430. Beneficiary's entitlement to net income — assets subject to trust — assets subject to successive income interest — termination of income interest. (1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust at the following times:

(a) in the case of an asset that is transferred to a trust during the transferor's life, on the date it is transferred to the trust;

(b) in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate, on the date of the testator's death; or

(c) in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death, on the date of the individual's death.

(3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

History: **En. Sec. 10, Ch. 506, L. 2003.**

72-34-431. Allocation of income receipt or disbursement. (1) A trustee shall allocate an income receipt or disbursement other than one to which 72-34-428(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal, and the balance must be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this part.

Distributions to shareholders or other owners from an entity to which 72-34-433 applies are considered to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

History: En. Sec. 11, Ch. 506, L. 2003.

72-34-432. Undistributed income — definition — payment to beneficiary. (1) (a) For the purposes of this section, "undistributed income" means net income received before the date on which an income interest ends.

(b) The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal by the trust.

(2) Except as provided in subsection (3), on the date when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end the beneficiary's share of the undistributed income that is not disposed of under the trust.

(3) If immediately before the income interest ends, the beneficiary under subsection (2) has an unqualified power to revoke more than 5% of the trust, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(4) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment.

History: En. Sec. 12, Ch. 506, L. 2003.

72-34-433. Allocation of receipts to income or principal — entity defined. (1) For the purposes of this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or decedent's estate to which 72-34-434 applies, a business or activity to which 72-34-435 applies, or an asset-backed security to which 72-34-447 applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate to principal the following receipts from an entity:

(a) property other than money;

(b) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(c) money received in total or partial liquidation of the entity; and

(d) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(4) For purposes of subsection (3)(c):

(a) money is received in partial liquidation:

(i) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(ii) if the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's yearend financial statements immediately preceding the initial receipt;

(b) money is not received in partial liquidation, nor may it be taken into account under subsection (4)(a)(ii), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary is required to pay on taxable income of the entity that distributes the money.

(5) A trustee may rely on a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

History: En. Sec. 13, Ch. 506, L. 2003.

72-34-434. Allocation of amounts received from specified trusts or estates. A trustee shall allocate to income an amount received as a distribution of income from a trust or a decedent's estate, other than an interest in an investment entity, in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from the trust or estate.

History: **En. Sec. 14, Ch. 506, L. 2003.**

72-34-435. Separate accounting records for business or other activity. (1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or other activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and its other reasonably foreseeable needs, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or other activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business or other activity.

(3) Businesses and other activities for which a trustee may maintain separate accounting records include the following:

(a) retail, manufacturing, service, and other traditional business activities;
(b) farming;
(c) raising and selling livestock and other animals;
(d) managing rental properties;
(e) extracting minerals and other natural resources;
(f) timber operations; and
(g) activities to which 72-34-446 applies.

History: **En. Sec. 15, Ch. 506, L. 2003.**

72-34-436. Amounts allocated to principal. A trustee shall allocate to principal:

(1) to the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) subject to any contrary rules in 72-34-433 through 72-34-447, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in 72-34-449(1)(g) or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or is required to distribute income; and

(6) other receipts allocated to principal as provided in 72-34-440 through 72-34-447.

History: **En. Sec. 16, Ch. 506, L. 2003.**

72-34-437. Amounts received from rental property allocation. Unless the trustee accounts for receipts from rental property pursuant to 72-34-435, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

History: **En. Sec. 17, Ch. 506, L. 2003.**

72-34-438. Interest on obligation to pay money — allocation. (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(2) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or its value when it is otherwise acquired is less than its value at maturity, must be allocated to principal. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when it is otherwise acquired must be allocated to income.

(3) This section does not apply to an obligation to which 72-34-441, 72-34-442, 72-34-443, 72-34-444, 72-34-446, or 72-34-447 applies.

History: **En. Sec. 18, Ch. 506, L. 2003.**

72-34-439. Life insurance policy proceeds — proceeds of contracts insuring against certain losses — allocation. (1) Except as otherwise provided in subsection (2), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to 72-34-435, loss of profits from a business.

(3) This section does not apply to a contract to which 72-34-441 applies.

History: **En. Sec. 19, Ch. 506, L. 2003.**

72-34-440. Insubstantial allocation — allocation of entire amount to principal — exceptions. (1) If a trustee determines that an allocation between principal and income required by 72-34-441, 72-34-442, 72-34-443, 72-34-444, or 72-34-447 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in 72-34-424(2) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in 72-34-424(3) and may be released for the reasons and in the manner provided in 72-34-424(4) and (5).

(2) An allocation is presumed to be insubstantial in either of the following cases:

(a) when the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

(b) when the value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

(3) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failure to make an allocation under this section.

History: **En. Sec. 20, Ch. 506, L. 2003.**

72-34-441. Payments characterized as interest or dividend — allocation to income — allocation of other payments — excess allocation to income in order to obtain estate tax marital deduction. (1) In this section:

(a) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (4), (5), (6), and (7), the term also includes any payment from any separate fund, regardless of the reason for the payment.

(b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(4) Except as otherwise provided in subsection (5), subsections (6) and (7) apply and subsections (2) and (3) do not apply in determining the allocation of a payment made from a separate fund to:

(a) a trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code, 26 U.S.C. 2056(b)(7), as amended, has been made; or

(b) a trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code, 26 U.S.C. 2056(b)(5), as amended.

(5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of payments would, without the application of subsection (4), qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code, 26 U.S.C. 2056(b)(7)(C), as amended.

(6) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this part. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(7) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 3% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code, 26 U.S.C. 7520, as amended, for the month preceding the accounting period for which the computation is made.

(8) This section does not apply to payments to which 72-34-442 applies.

History: En. Sec. 21, Ch. 506, L. 2003; amd. Sec. 1, Ch. 285, L. 2011.

72-34-442. Receipts from liquidating assets — allocation. (1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to 72-34-441, natural resources subject to 72-34-443, timber subject to 72-34-444, a derivative or option subject to 72-34-446, an asset subject to 72-34-447, or any asset for which the trustee establishes a reserve for depreciation under 72-34-450.

(2) A trustee shall allocate to income 85% from a liquidating asset and the balance to principal.

History: En. Sec. 22, Ch. 506, L. 2003; amd. Sec. 5, Ch. 513, L. 2005.

72-34-443. Receipts from mineral interests and other natural resources — allocation. (1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) if received as a nominal bonus, nominal delay rental, or nominal annual rent on a lease, a receipt must be allocated to income;

(b) if received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(c) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 15% must be allocated to principal and the balance to income; and

(d) if an amount is received from a working interest or any other interest in mineral or other natural resources not described in subsection (1)(a), (1)(b), or (1)(c), 15% of the net amount received must be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 15% of the amount must be allocated to principal and the balance to income.

(3) This part applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

History: En. Sec. 23, Ch. 506, L. 2003.

72-34-444. Receipts from sale of timber and related products — allocation. (1) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts as follows:

(a) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subsections (1)(a) and (1)(b);

(d) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subsection (1)(a), (1)(b), or (1)(c).

(2) In determining net receipts to be allocated under subsection (1), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(3) This part applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

History: En. Sec. 24, Ch. 506, L. 2003.

72-34-445. Increasing income in order to maintain marital deduction. (1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets and if the amounts that the trustee transfers from principal to income under 72-34-424 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income or convert it into productive property or exercise the power under 72-34-424(1) within a reasonable time. The trustee may decide which action or combination of actions to take.

(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of a trust asset are principal without regard to the amount of income the asset produces during any accounting period.

History: En. Sec. 25, Ch. 506, L. 2003.

72-34-446. Transactions in derivatives — allocations of receipts and disbursements — options to buy or sell property — allocation of amounts received or paid. (1) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under 72-34-435 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to

sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

History: **En. Sec. 26, Ch. 506, L. 2003; amd. Sec. 154, Ch. 264, L. 2013.**

72-34-447. Payments from collateral financial assets and payments in exchange for interest in asset-backed security — allocation. (1) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which 72-34-433 or 72-34-441 applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(3) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

History: **En. Sec. 27, Ch. 506, L. 2003.**

72-34-448. Disbursements from income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which 72-34-428(3)(b) or (3)(c) applies:

(1) except as otherwise ordered by the court, one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) except as otherwise ordered by the court, one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) all recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

History: **En. Sec. 28, Ch. 506, L. 2003.**

72-34-449. Disbursements from principal. (1) A trustee shall make the following disbursements from principal:

(a) except as otherwise ordered by the court, the remaining one-half of the disbursements described in 72-34-448(1) and (2);

(b) except as otherwise ordered by the court, all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination and disbursements made to prepare property for sale;

(c) payments on the principal of a trust debt;

(d) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(e) premiums paid on a policy of insurance not described in 72-34-448(4) of which the trust is the owner and beneficiary;

(f) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(g) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(2) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

History: En. Sec. 29, Ch. 506, L. 2003.

72-34-450. Assets subject to depreciation — transfer from income to principal of portion of net cash receipts. (1) For purposes of this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

(2) A trustee may transfer from income to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, under generally accepted accounting principles, but may not transfer any amount for depreciation under this section in any of the following circumstances:

(a) as to the portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(b) during the administration of a decedent's estate; or

(c) if the trustee is accounting under 72-34-435 for the business or activity in which the asset is used.

(3) An amount transferred from income to principal need not be held as a separate fund.

History: En. Sec. 30, Ch. 506, L. 2003.

72-34-451. Transfer from income to principal in anticipation of principal disbursement. (1) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(a) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(b) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(c) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(d) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(e) disbursements described in 72-34-449(1)(g).

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (1).

History: En. Sec. 31, Ch. 506, L. 2003.

72-34-452. Payment of taxes. (1) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(a) from income to the extent that receipts from the entity are allocated only to income;

(b) from principal to the extent that receipts from the entity are allocated only to principal;

(c) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(d) from principal to the extent that the tax exceeds the total receipts from the entity.

(4) After applying subsections (1) through (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

History: **En. Sec. 32, Ch. 506, L. 2003; amd. Sec. 2, Ch. 285, L. 2011.**

72-34-453. Adjustments between principal and income in certain cases. (1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

(a) elections and decisions, other than those described in subsection (2), that the fiduciary makes from time to time regarding tax matters;

(b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(c) the ownership by a decedent's estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and as a result estate taxes paid from principal are increased and income taxes paid by a decedent's estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

History: **En. Sec. 33, Ch. 506, L. 2003.**

Part 5
Liability of Trustees to Beneficiaries
(Repealed)

72-34-501. Repealed. Sec. 162, Ch. 264, L. 2013.

History: **En. Sec. 151, Ch. 685, L. 1989.**

72-34-502. Repealed. Sec. 162, Ch. 264, L. 2013.

History: **En. Sec. 152, Ch. 685, L. 1989.**

72-34-503. Repealed. Sec. 162, Ch. 264, L. 2013.

History: **En. Sec. 153, Ch. 685, L. 1989.**

72-34-504. Repealed. Sec. 162, Ch. 264, L. 2013.

History: **En. Sec. 154, Ch. 685, L. 1989.**

72-34-505 reserved.

72-34-506. Repealed. Sec. 162, Ch. 264, L. 2013.

History: **En. Sec. 155, Ch. 685, L. 1989.**

72-34-507. Repealed. Sec. 162, Ch. 264, L. 2013.

History: **En. Sec. 156, Ch. 685, L. 1989.**

72-34-508. Repealed. Sec. 162, Ch. 264, L. 2013.

History: **En. Sec. 157, Ch. 685, L. 1989.**

72-34-509. Repealed. Sec. 162, Ch. 264, L. 2013.

History: **En. Sec. 158, Ch. 685, L. 1989.**

72-34-510 reserved.

72-34-511. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 159, Ch. 685, L. 1989.

72-34-512. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 160, Ch. 685, L. 1989.

72-34-513. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 161, Ch. 685, L. 1989; amd. Sec. 35, Ch. 592, L. 1995.

72-34-514. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 162, Ch. 685, L. 1989; amd. Sec. 2483, Ch. 56, L. 2009.

72-34-515. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 163, Ch. 685, L. 1989; amd. Sec. 2484, Ch. 56, L. 2009.

72-34-516. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 164, Ch. 685, L. 1989; amd. Sec. 2485, Ch. 56, L. 2009.

72-34-517. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 36, Ch. 592, L. 1995.

Part 6
Montana Uniform Prudent Investor Act
(Repealed)

72-34-601. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 1, Ch. 484, L. 2003.

72-34-602. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 2, Ch. 484, L. 2003.

72-34-603. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 3, Ch. 484, L. 2003.

72-34-604. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 76, Ch. 685, L. 1989; Sec. 72-34-104, MCA 2001; redes. 72-34-604 by Sec. 14, Ch. 484, L. 2003.

72-34-605. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 4, Ch. 484, L. 2003.

72-34-606. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 5, Ch. 484, L. 2003.

72-34-607. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 6, Ch. 484, L. 2003.

72-34-608. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 7, Ch. 484, L. 2003.

72-34-609. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 8, Ch. 484, L. 2003.

72-34-610. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 9, Ch. 484, L. 2003.

CHAPTER 35
TRUST CODE — JUDICIAL PROCEEDINGS CONCERNING TRUSTS
(Repealed)

Part 1 — Jurisdiction and Venue (Repealed)
Part 2 — Notice (Repealed)
Part 3 — Proceedings Concerning Trusts (Repealed)
Part 4 — Transfer of Trust to Another Jurisdiction (Repealed)
Part 5 — Transfer of Trust From Another Jurisdiction (Repealed)

Part 1
Jurisdiction and Venue
(Repealed)

72-35-101. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 165, Ch. 685, L. 1989.

72-35-102. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 166, Ch. 685, L. 1989.

72-35-103. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 167, Ch. 685, L. 1989.

72-35-104. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 168, Ch. 685, L. 1989.

72-35-105. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 169, Ch. 685, L. 1989.

72-35-106. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 170, Ch. 685, L. 1989.

72-35-107. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 171, Ch. 685, L. 1989.

Part 2
Notice
(Repealed)

72-35-201. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 172, Ch. 685, L. 1989.

72-35-202. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 173, Ch. 685, L. 1989.

72-35-203. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 174, Ch. 685, L. 1989.

72-35-204 and 72-35-205 reserved.

72-35-206. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 175, Ch. 685, L. 1989.

72-35-207. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 176, Ch. 685, L. 1989.

72-35-208. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 177, Ch. 685, L. 1989.

72-35-209. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 178, Ch. 685, L. 1989.

Part 3
Proceedings Concerning Trusts
(Repealed)

72-35-301. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 179, Ch. 685, L. 1989.

72-35-302. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 180, Ch. 685, L. 1989.

72-35-303. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 181, Ch. 685, L. 1989.

72-35-304 and 72-35-305 reserved.

72-35-306. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 182, Ch. 685, L. 1989; amd. Sec. 10, Ch. 290, L. 1999.

72-35-307. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 183, Ch. 685, L. 1989.

72-35-308. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 184, Ch. 685, L. 1989.

72-35-309 and 72-35-310 reserved.

72-35-311. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 185, Ch. 685, L. 1989.

72-35-312. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 186, Ch. 685, L. 1989.

72-35-313. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 187, Ch. 685, L. 1989; amd. Sec. 2486, Ch. 56, L. 2009.

72-35-314. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 188, Ch. 685, L. 1989.

72-35-315. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 189, Ch. 685, L. 1989.

Part 4
Transfer of Trust to Another Jurisdiction (Repealed)

72-35-401. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 190, Ch. 685, L. 1989.

72-35-402. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 191, Ch. 685, L. 1989.

72-35-403. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 192, Ch. 685, L. 1989.

72-35-404. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 193, Ch. 685, L. 1989.

72-35-405. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 194, Ch. 685, L. 1989.

72-35-406. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 195, Ch. 685, L. 1989.

Part 5
Transfer of Trust From Another Jurisdiction (Repealed)

72-35-501. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 196, Ch. 685, L. 1989.

72-35-502. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 197, Ch. 685, L. 1989.

72-35-503. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 198, Ch. 685, L. 1989.

72-35-504. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 199, Ch. 685, L. 1989.

72-35-505. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 200, Ch. 685, L. 1989.

72-35-506. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 201, Ch. 685, L. 1989.

72-35-507. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 202, Ch. 685, L. 1989.

72-35-508. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 203, Ch. 685, L. 1989.

CHAPTER 36
TRUST CODE — RIGHTS OF THIRD PERSONS
(Renumbered and Repealed)

Part 1 — Liability of Trustee to Third Persons (Repealed)

Part 2 — Protection of Third Persons (Renumbered and Repealed)

Part 3 — Rights of Creditors of Trustor (Repealed)

Part 1
Liability of Trustee to Third Persons (Repealed)

72-36-101. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 204, Ch. 685, L. 1989.

72-36-102. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 205, Ch. 685, L. 1989.

72-36-103. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 206, Ch. 685, L. 1989.

72-36-104. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 207, Ch. 685, L. 1989.

72-36-105. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 208, Ch. 685, L. 1989.

72-36-106. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 209, Ch. 685, L. 1989.

Part 2
Protection of Third Persons (Renumbered and Repealed)

72-36-201. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 210, Ch. 685, L. 1989.

72-36-202. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 211, Ch. 685, L. 1989.

72-36-203. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 212, Ch. 685, L. 1989.

72-36-204 and 72-36-205 reserved.

72-36-206. Renumbered 72-38-1111. Code Commissioner, 2013.

Part 3
Rights of Creditors of Trustor (Repealed)

72-36-301. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 214, Ch. 685, L. 1989.

72-36-302. Repealed. Sec. 162, Ch. 264, L. 2013.
History: En. Sec. 215, Ch. 685, L. 1989.

CHAPTER 37
FUNERAL PLAN TRUSTS
(Repealed)

Part 1 — General Provisions (Repealed)

Part 1
General Provisions
(Repealed)

72-37-101. Repealed. Sec. 6, Ch. 336, L. 1999.

History: En. Sec. 1, Ch. 232, L. 1953; amd. Sec. 1, Ch. 454, L. 1977; R.C.M. 1947, 86-701; Sec. 72-27-201, MCA 1987; redes. 72-37-101 by Code Commissioner, 1989.

72-37-102. Repealed. Sec. 6, Ch. 336, L. 1999.

History: En. Sec. 2, Ch. 232, L. 1953; R.C.M. 1947, 86-702; Sec. 72-27-202, MCA 1987; redes. 72-37-102 by Code Commissioner, 1989; amd. Sec. 7, Ch. 365, L. 1997.

72-37-103. Repealed. Sec. 6, Ch. 336, L. 1999.

History: En. Sec. 3, Ch. 232, L. 1953; amd. Sec. 144, Ch. 431, L. 1975; R.C.M. 1947, 86-703; amd. Sec. 2, Ch. 274, L. 1981; Sec. 72-27-203, MCA 1987; redes. 72-37-103 by Code Commissioner, 1989; amd. Sec. 8, Ch. 365, L. 1997.

72-37-104. Repealed. Sec. 6, Ch. 336, L. 1999.

History: En. Sec. 4, Ch. 232, L. 1953; R.C.M. 1947, 86-704; Sec. 72-27-204, MCA 1987; redes. 72-37-104 by Code Commissioner, 1989.

CHAPTER 38
MONTANA UNIFORM TRUST CODE

Part 1 — General Provisions, Definitions, Constructive and Resulting Trusts, and Notice of Proposed Action by Trustee

72-38-101. Short title.
72-38-102. Scope.
72-38-103. Definitions.
72-38-104. Knowledge.
72-38-105. Default and mandatory rules.
72-38-106. Common law of trusts — principles of equity.
72-38-107. Governing law.
72-38-108. Principal place of administration.
72-38-109. Methods and waiver of notice.
72-38-110. Others treated as qualified beneficiaries.
72-38-111. Nonjudicial settlement agreements.
72-38-112. Rules of construction.
72-38-113. Insurable interest of trustee.
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Part 1
General Provisions, Definitions, Constructive and Resulting Trusts, and Notice of Proposed Action by Trustee

72-38-101. Short title. This chapter may be cited as the Montana Uniform Trust Code.

History: En. Sec. 1, Ch. 264, L. 2013.

72-38-102. Scope. This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. Other than 72-38-120 through 72-38-123, nothing in this chapter affects the law relating to constructive or resulting trusts.

History: En. Sec. 2, Ch. 264, L. 2013.

72-38-103. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

(3) "Beneficiary" means a person who:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust or portion of a trust created for a charitable purpose described in 72-38-405(1).

(5) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual.

(6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7) "Guardian" means a person appointed by the court, by a parent, or by a spouse to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

(8) "Interested person" means:

(a) the trustee;

(b) the qualified beneficiaries who are entitled to notice; and

(c) the attorney general if the petition is related to a charitable trust subject to the jurisdiction of the attorney general.

(9) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(10) "Jurisdiction", with respect to a geographic area, includes a state or country.

(11) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether mandatory or discretionary, or who holds a presently exercisable power of appointment over trust property. The term includes a charitable organization only if it is expressly designated to receive distributions under the terms of the charitable trust.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(13) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(a) exercisable by a trustee and limited by an ascertainable standard; or

(b) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(14) (a) "Principal place of administration" means the usual place in which the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust unless otherwise designated by the terms of the trust as provided in 72-38-108.

(b) If the principal place of administration of the trust cannot be determined under subsection (14)(a), then it must be determined as follows:

(i) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(ii) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

(15) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(16) "Qualified beneficiary" means a beneficiary who on the date the beneficiary's qualification is determined:

(a) is a distributee or permissible distributee of trust income or principal;

(b) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subsection (16)(a) terminated on that date without causing the trust to terminate; or

(c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(17) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(18) "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(19) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(21) "Terms of a trust" means:

(a) except as otherwise provided in subsection (21)(b), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(b) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under 72-38-111.

(22) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(23) "Trustee" includes an original, additional, and successor trustee and a cotrustee.

History: En. Sec. 3, Ch. 264, L. 2013; amd. Sec. 20, Ch. 325, L. 2021.

72-38-104. Knowledge. (1) Subject to subsection (2), a person has knowledge of or knows a fact if the person:

(a) has actual knowledge of it;

(b) has received a notice or notification of it; or

(c) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

History: En. Sec. 4, Ch. 264, L. 2013.

72-38-105. Default and mandatory rules. (1) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(2) The terms of a trust prevail over any provision of this chapter except:

(a) the requirements for creating a trust;

(b) subject to 72-40-113, 72-40-115, and 72-40-116, the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(c) the requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(d) the power of the court to modify or terminate a trust under 72-38-410 through 72-38-416;

(e) the effect of a spendthrift provision;

(f) the power of the court under 72-38-702 to require, dispense with, or modify or terminate a bond;

(g) the power of the court under 72-38-708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high;

(h) the effect of an exculpatory term under 72-38-1008;

(i) the rights under 72-38-1010 through 72-38-1013 of a person other than a trustee or beneficiary;

(j) the periods of limitation for commencing a judicial proceeding;

(k) the power of the court to take the action and exercise the jurisdiction that may be necessary in the interests of justice; and

(l) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in 72-38-201 and 72-38-205.

History: **En. Sec. 5, Ch. 264, L. 2013; amd. Sec. 21, Ch. 325, L. 2021.**

72-38-106. Common law of trusts — principles of equity. The common law of trusts and principles of equity supplement this chapter except to the extent modified by this chapter or another statute of this state.

History: **En. Sec. 6, Ch. 264, L. 2013.**

72-38-107. Governing law. The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

History: **En. Sec. 7, Ch. 264, L. 2013.**

72-38-108. Principal place of administration. (1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(a) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(b) all or part of the administration occurs in the designated jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(a) the name of the jurisdiction to which the principal place of administration is to be transferred;

(b) the address and telephone number at the new location at which the trustee can be contacted;

(c) an explanation of the reasons for the proposed transfer;

(d) the date on which the proposed transfer is anticipated to occur; and

(e) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to 72-38-704.

History: En. Sec. 8, Ch. 264, L. 2013.

72-38-109. Methods and waiver of notice. (1) (a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.

(b) Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

(c) Notice of at least 30 days prior to the event for which notice is given is considered to be reasonable unless otherwise specifically provided in this chapter.

(2) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(3) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(4) Notice of a judicial proceeding must be given as provided in 72-38-208 through 72-38-212.

History: En. Sec. 9, Ch. 264, L. 2013; amd. Sec. 3, Ch. 564, L. 2023.

72-38-110. Others treated as qualified beneficiaries. (1) Except as provided in 72-38-813, whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(2) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a beneficiary and a qualified beneficiary under this chapter if the charitable organization, on the date the charitable organization's qualification is being determined:

(a) is a distributee or permissible distributee of trust income or principal;

(b) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(3) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in 72-38-408 or 72-38-409 has the rights of a qualified beneficiary under this chapter.

(4) With respect to a charitable trust having its principal place of administration in this state:

(a) The attorney general of this state has the rights of a beneficiary.

(b) The attorney general of this state has the following two rights of a qualified beneficiary:

(i) the right to request information pursuant to 72-38-813(1); and

(ii) the right to request a copy of the annual report pursuant to 72-38-813(3).

(c) The attorney general of this state has all of the rights of a qualified beneficiary of a charitable trust if, on the date that a determination is being made as to the rights of the attorney general under this subsection(4), a charitable interest in the trust is not represented by a qualified beneficiary under subsection (2).

History: En. Sec. 10, Ch. 264, L. 2013; amd. Sec. 4, Ch. 564, L. 2023.

72-38-111. Nonjudicial settlement agreements. (1) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(2) Except as otherwise provided in subsection (3), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter.

(4) Matters that may be resolved by a nonjudicial settlement agreement include but are not limited to:

(a) the interpretation or construction of the terms of the trust;

(b) the approval of a trustee's report or accounting;

(c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(d) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(e) transfer of a trust's principal place of administration; and

(f) liability of a trustee for an action relating to the trust.

(5) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Title 72, chapter 38, part 3, was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

History: **En. Sec. 11, Ch. 264, L. 2013; amd. Sec. 31, Ch. 55, L. 2015; amd. Sec. 5, Ch. 564, L. 2023.**

72-38-112. Rules of construction. The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

History: **En. Sec. 12, Ch. 264, L. 2013.**

72-38-113. Insurable interest of trustee. (1) In this section, "settlor" means a person who executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.

(2) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

(a) the insured is:

(i) a settlor of the trust; or

(ii) an individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and

(b) the life insurance proceeds are primarily for the benefit of one or more trust beneficiaries who have an insurable interest in the life of the insured as provided in 33-15-201.

History: **En. Sec. 13, Ch. 264, L. 2013.**

72-38-114 through 72-38-119 reserved.

72-38-120. Resulting trust upon failure of trust. When the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or the transferor's estate unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

History: **En. Sec. 14, Ch. 264, L. 2013.**

72-38-121. Resulting trust upon full performance of trust. When the owner of property gratuitously transfers it subject to a trust that is properly declared and that is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or the transferor's estate unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

History: **En. Sec. 15, Ch. 264, L. 2013.**

72-38-122. Purchase money resulting trust. (1) When a transfer of property is made to one person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

History: **En. Sec. 16, Ch. 264, L. 2013.**

72-38-123. Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if the holder were permitted to retain it.

History: **En. Sec. 17, Ch. 264, L. 2013.**

72-38-124. Resulting trusts — constructive trusts — statute of frauds. Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under 72-38-407(3).

History: **En. Sec. 18, Ch. 264, L. 2013.**

72-38-125 through 72-38-129 reserved.

72-38-130. Scope and effect of part — proposed action or inaction described. (1) Subject to 72-38-131(2), a trustee may give a notice of proposed action or notice of proposed inaction regarding a matter governed by the provisions of Title 72, chapter 3, part 4, 72-38-801 through 72-38-817, Title 72, chapter 38, part 9, or any other provision of law or this chapter under which a trustee has discretion to act as provided in 72-38-130 through 72-38-134.

(2) For the purpose of 72-38-130 through 72-38-134, a proposed action includes a course of action or a decision not to take action. Sections 72-38-130 through 72-38-134 do not preclude an application or assertion of any other rights or remedies available to an interested party as otherwise provided in this chapter regarding an action to be taken or not to be taken by the trustee.

History: **En. Sec. 19, Ch. 264, L. 2013.**

72-38-131. When use of notice authorized. (1) The trustee who elects to provide notice pursuant to this part shall provide notice of the proposed action or notice of proposed inaction to each qualified beneficiary as provided in 72-38-130 through 72-38-134.

(2) Notwithstanding any other provisions of 72-38-130 through 72-38-134, the trustee may not use a notice of proposed action or notice of proposed inaction in any of the following circumstances:

(a) allowance of the trustee's compensation;

(b) allowance of compensation of the attorney for the trustee;

(c) settlement of accounts or reports;

(d) preliminary and final distributions and discharge;

(e) sale of property of the trust to the trustee or to the attorney for the trustee;

(f) exchange of property of the trust for property of the trustee or for property of the attorney for the trustee;

(g) grant of an option to purchase property of the trust to the trustee or to the attorney for the trustee;

(h) allowance, payment, or compromise of a claim of the trustee, or the attorney for the trustee, against the trust;

(i) compromise of settlement of a claim, action, or proceeding by the trust against the trustee or against the attorney for the trust; and

(j) extension, renewal, or modification of the terms of a debt or other obligation of the trustee, or the attorney for the trustee, owing to or in favor of the trust.

(3) Notice of proposed action or notice of proposed inaction is not required to be given to a qualified beneficiary who consents in writing to the proposed action or inaction. The consent may be executed at any time before or after the effective date of the proposed action or inaction.

(4) A trustee is not required to provide a copy of the notice of the proposed action or notice of proposed inaction to a qualified beneficiary who is known to the trustee but who cannot be located by the trustee after reasonable diligence or who is unknown to the trustee.

History: **En. Sec. 20, Ch. 264, L. 2013.**

72-38-132. Content of notice. The notice of proposed action or notice of proposed inaction must state that it is given pursuant to this part and must include all of the following:

(1) the name and mailing address of the trustee;

(2) the name and telephone number of a person who may be contacted for additional information;

(3) a description of the action or inaction proposed, the material facts upon which the trustee has relied in making its decision regarding the proposed action or inaction, and an explanation of the reasons for the action or inaction;

(4) a statement that failure of a qualified beneficiary to object within the allowed time bars the qualified beneficiary from taking any legal action against the trustee for liability within the scope of 72-38-133 except as provided in 72-38-133(3) and that a qualified beneficiary may want to seek independent legal advice regarding the matter at the qualified beneficiary's expense;

(5) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction; and

(6) the date on or after which the proposed action or inaction is effective.

History: **En. Sec. 21, Ch. 264, L. 2013; amd. Sec. 32, Ch. 55, L. 2015; amd. Sec. 1, Ch. 181, L. 2015.**

72-38-133. Objection to proposed action or inaction — petition — liability of trustee. (1) A qualified beneficiary may object to the proposed action or inaction by providing a written objection to the trustee at the address stated in the notice of proposed action or notice of proposed inaction within the time period specified in the notice of proposed action or notice of proposed inaction. The written objection may take any form reasonably calculated to communicate the objection but need not give any reason for the objection.

(2) Except as provided in subsection (3), a trustee is not liable to a qualified beneficiary for an action or inaction regarding a matter governed by this part if the trustee does not receive a written objection to the proposed action or inaction from the qualified beneficiary within the applicable period and the other requirements of this part are satisfied. Except as provided in subsection (3), if no qualified beneficiary objects under this section, the trustee is not liable to any qualified beneficiary with respect to the proposed action or inaction. This section does not apply to an unborn or minor child or an incapacitated adult unless notice of the proposed action is provided to an appropriate representative pursuant to 72-38-303.

(3) The failure of a qualified beneficiary to object does not preclude the qualified beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) if the qualified beneficiary at the time of the qualified beneficiary's failure to object did not have notice of the proposed action as prescribed in 72-38-130 through 72-38-134; or

(b) if the qualified beneficiary's failure to object was induced by improper conduct of the trustee.

(4) If the trustee receives a written objection to a notice of proposed action within the applicable period, either the trustee or a qualified beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, the trustee has the burden of proving that the trustee's proposed action should be taken. A qualified beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(5) If the trustee decides not to implement the proposed action, the trustee shall notify the qualified beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any beneficiary. A qualified beneficiary may petition the court to have the action taken, and the qualified beneficiary has the burden of proving that it should be taken.

(6) If the trustee receives a written objection to a notice of proposed inaction within the applicable period, either the trustee or a qualified beneficiary may petition the court to approve the proposed inaction. In the proceeding, the trustee has the burden of proving that the trustee should not act. A qualified beneficiary who has not objected is not estopped from opposing the proposed inaction in the proceeding.

(7) If after providing a notice of proposed inaction, the trustee decides to act, the trustee shall notify the qualified beneficiaries of the decision to act and the reasons for the decision, and the trustee's decision does not itself give rise to liability to any beneficiary. A qualified beneficiary may petition the court to direct the trustee not to act, and the qualified beneficiary has the burden of proof.

History: **En. Sec. 22, Ch. 264, L. 2013.**

72-38-134. Procedures not required. Sections 72-38-130 through 72-38-134 do not require a trustee to use these procedures prior to taking any action or deciding not to act.

History: **En. Sec. 23, Ch. 264, L. 2013.**

Part 2
Judicial Proceedings

72-38-201. Subject matter jurisdiction. (1) The district court having jurisdiction over the trust pursuant to this chapter has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to this chapter has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;
(b) actions and proceedings by or against creditors or debtors of trusts; and
(c) other actions and proceedings involving trustees and third persons.

History: **En. Sec. 24, Ch. 264, L. 2013.**

72-38-202. Powers of court. In proceedings concerning the internal affairs of trusts commenced pursuant to this chapter, the court has all the powers of a district court exercising its general jurisdiction.

History: **En. Sec. 25, Ch. 264, L. 2013.**

72-38-203. Jurisdiction over trustees and beneficiaries. Subject to 72-38-204:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state, the trustee submits personally to the jurisdiction of the court under this chapter;

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under this chapter; and

(3) by accepting a distribution from a trust having its principal place of administration in this state, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

History: **En. Sec. 26, Ch. 264, L. 2013.**

72-38-204. Basis of jurisdiction over trust, trust property, and trust parties. The court may exercise jurisdiction in proceedings under Title 72, chapter 38, part 2, on any basis permitted by Title 72, chapter 38, part 2, or by Rule 4, Montana Rules of Civil Procedure.

History: **En. Sec. 27, Ch. 264, L. 2013.**

72-38-205. Venue. (1) Except as otherwise provided in subsection (2), venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(2) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding pursuant to this chapter is determined by the rules applicable to civil actions generally.

History: En. Sec. 28, Ch. 264, L. 2013.

72-38-206. Rules of procedure in trust proceedings. (1) The pleadings described in 72-38-214 are permitted pleadings in judicial proceedings under this chapter.

(2) Unless specifically provided to the contrary in this chapter or unless inconsistent with this chapter, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern proceedings under this chapter.

History: En. Sec. 29, Ch. 264, L. 2013.

72-38-207. Jury trial. There is no right to a jury trial in proceedings under this chapter concerning the internal affairs of trusts.

History: En. Sec. 30, Ch. 264, L. 2013.

72-38-208. Application. Sections 72-38-209 through 72-38-212 apply to notice in proceedings commenced pursuant to Title 72, chapter 38, part 2.

History: En. Sec. 31, Ch. 264, L. 2013.

72-38-209. Notice — method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided in this chapter, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney.

(2) Notice must be given:

(a) by mailing a copy of the notice at least 14 days before the time set for the hearing by certified mail or ordinary first-class mail addressed to the person being notified at the post-office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known;

(b) by delivering a copy of the notice to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing the notice in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication. There must be at least 10 days from the first to the last day of publication, both the first and last day being included.

(3) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(4) Proof of the giving of notice must be made on or before the hearing and filed in the proceeding. If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

History: En. Sec. 32, Ch. 264, L. 2013.

72-38-210. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

History: En. Sec. 33, Ch. 264, L. 2013.

72-38-211. Pleadings — when orders or notice binding one binds another — representation. In proceedings involving trusts, the following apply:

(1) Interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.

(b) (i) To the extent there is no conflict of interest between them or among persons represented, orders binding a:

(A) conservator bind the person whose estate the conservator controls;

(B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

(C) trustee bind beneficiaries of the trust in proceedings establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; and

(D) personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate.

(ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may represent the parent's minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-38-209 must be given to every interested person or to one who can bind an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to another who may bind the person.

(b) Notice is given to unborn or unascertained persons who are not represented under subsection (2)(a) or (2)(b) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding. The guardian ad litem is entitled to reasonable compensation and to costs and expenses, including attorney fees.

(5) The notice for a petition and hearing requesting the court to settle reports or pass upon the acts of the trustee or that otherwise may affect substantive property rights of a beneficiary or other interested party must state that fact in the notice and must further state that failure to appear and object bars any further claims against the trustee relating to the subject matter of the petition.

History: En. Sec. 34, Ch. 264, L. 2013.

72-38-212. Additional notice. (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any stage of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

History: En. Sec. 35, Ch. 264, L. 2013.

72-38-213. Petitioners — grounds for petition. (1) Except as provided in 72-38-603, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include but are not limited to proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property must pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to provide information about the trust or submit a report to a qualified beneficiary if:

(i) the trustee has failed to provide information or submit a requested report within 60 days after written request of the qualified beneficiary; and

(ii) in the case of a report, no report has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to 72-38-825.

History: En. Sec. 36, Ch. 264, L. 2013.

72-38-214. Commencement of proceedings. (1) A proceeding under this chapter is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(2) The following pleadings are specifically permitted:

(a) a petition filed pursuant to this chapter;

(b) a report or account filed in regard to a petition filed pursuant to this chapter; and

(c) an objection or response filed in regard to a petition, report, or account filed pursuant to this chapter.

(3) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

(4) Except as provided in 25-4-203 regarding verification by an agent or attorney, all pleadings described in subsection (2) must be verified as follows:

(a) A petition must be verified by the petitioner or, if there are two or more parties joining in the petition, by any one of the petitioners.

(b) A report or account must be verified by the person who has the duty to make the report or, if there are two or more persons having a duty to report, by any one of the persons having the duty.

(c) An objection or response must be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any one of the objectors or respondents.

(5) In any trust proceeding, an affidavit or verified petition must be received as evidence when offered in an uncontested proceeding under this chapter.

(6) In addition to the verification required by 25-4-203 and subsection (5), every pleading filed in connection with any trust proceeding must be signed by the attorney of the person filing the pleading if the person is represented by an attorney.

(7) Nothing in this chapter precludes the commencement, within a decedent's probate, of a trust proceeding for the construction of a testamentary trust, provided the probate has not previously been closed pursuant to Title 72, chapter 3, part 10.

History: En. Sec. 37, Ch. 264, L. 2013.

72-38-215. Dismissal of petition. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

History: En. Sec. 38, Ch. 264, L. 2013.

72-38-216. Request for special notice. (1) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of all pleadings in the proceeding relating to any or all of the purposes described in 72-38-213 and giving an address for receiving notice by mail. Proof of service of the request on the trustee must be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to 72-38-209.

(3) A request for special notice made by a beneficiary whose right to notice is restricted by 72-38-603 is not effective.

History: En. Sec. 39, Ch. 264, L. 2013.

72-38-217. Request for copy of petition. If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall mail a copy of the petition to the trustee or beneficiary within 5 days after service of the notice of appearance or receipt of the request.

History: En. Sec. 40, Ch. 264, L. 2013.

72-38-218. Authority to make necessary orders — temporary trustee. The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

History: En. Sec. 41, Ch. 264, L. 2013.

72-38-219. Appeal. An appeal may be taken from the grant or denial of any final order made under this chapter except the following:

(1) compelling the trustee to provide information or submit a report to a qualified beneficiary pursuant to 72-38-213(2)(g);

(2) accepting the resignation of a trustee pursuant to 72-38-213(2)(k); or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to 72-38-213(2)(r).

History: En. Sec. 42, Ch. 264, L. 2013.

72-38-220. Intermittent judicial intervention in trust administration. The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

History: En. Sec. 43, Ch. 264, L. 2013.

72-38-221. Enforcement of beneficiary's rights under charitable trust by attorney general. In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under this chapter.

History: En. Sec. 44, Ch. 264, L. 2013.

Part 3
Representation

72-38-301. Representation — basic effect. (1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation by notifying the trustee or representative before the consent would otherwise have become effective.

(3) Except as otherwise provided in 72-38-411 and 72-38-602, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(4) A settlor may not represent and bind a beneficiary under this part with respect to the termination or modification of a trust under 72-38-411(1).

(5) In the event of a conflict between this part and part 2 of this chapter, the provisions of part 2 must supersede the contrary provisions in this part.

History: En. Sec. 45, Ch. 264, L. 2013; amd. Sec. 33, Ch. 55, L. 2015; amd. Sec. 2, Ch. 181, L. 2015.

72-38-302. Representation by holder of general testamentary power of appointment. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

History: En. Sec. 46, Ch. 264, L. 2013.

72-38-303. Representation by fiduciaries and parents. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a conservator may represent and bind the estate that the conservator controls;

(2) a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed. The parent entitled to represent and bind the child is determined in the following order of priority:

(a) the parent who is a lineal descendant of a settlor;

(b) the parent who is a beneficiary of the trust that is the subject of the representation;

(c) the parent with legal custody of the child; and

(d) if one parent cannot be determined pursuant to the preceding criteria and if a disagreement arises between the parents seeking to represent the same child, a guardian ad litem must be appointed to represent the minor child.

History: En. Sec. 47, Ch. 264, L. 2013.

72-38-304. Representation by person having substantially identical interest. Unless otherwise represented, a minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

History: En. Sec. 48, Ch. 264, L. 2013.

72-38-305. Appointment of representative. (1) If the court determines that an interest is not represented under this part or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(2) A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

History: **En. Sec. 49, Ch. 264, L. 2013.**

Part 4
Creation, Validity, Modification, and Termination of Trust

72-38-401. Methods of creating trust. A trust may be created by:

(1) transfer of property to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) exercise of a power of appointment in favor of a trustee.

History: **En. Sec. 50, Ch. 264, L. 2013.**

72-38-402. Requirements for creation. (1) A trust is created only if:

(a) the settlor has capacity to create a trust;

(b) the settlor indicates an intention to create the trust;

(c) the trust has a definite beneficiary or is:

(i) a charitable trust;

(ii) a trust for the care of an animal, as provided in 72-38-408; or

(iii) a trust for a noncharitable purpose, as provided in 72-38-409;

(d) the trustee has duties to perform; and

(e) the same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(4) A conservation easement created or conveyed under Title 76, chapter 6, does not create a charitable trust unless the settlor expresses a clear intention in the conservation easement instrument to create or convey the conservation easement as a charitable trust.

History: **En. Sec. 51, Ch. 264, L. 2013.**

72-38-403. Trusts created in other jurisdictions. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a national;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

History: **En. Sec. 52, Ch. 264, L. 2013.**

72-38-404. Trust purposes. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

History: **En. Sec. 53, Ch. 264, L. 2013.**

72-38-405. Charitable purposes — enforcement. (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(3) A proceeding to enforce a charitable trust may be brought by the settlor, the attorney general, a charitable organization expressly named in the trust to receive distributions, or any other person with standing.

History: En. Sec. 54, Ch. 264, L. 2013.

72-38-406. Creation of trust induced by fraud, duress, or undue influence. A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

History: En. Sec. 55, Ch. 264, L. 2013.

72-38-407. Statute of frauds. A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the settlor or by the settlor's agent if authorized in writing to do so; or

(3) by operation of law.

History: En. Sec. 56, Ch. 264, L. 2013.

72-38-408. Trust for care of animal. (1) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, and otherwise to the settlor's successors in interest.

History: En. Sec. 57, Ch. 264, L. 2013.

72-38-409. Noncharitable trust without ascertainable beneficiary. Except as otherwise provided in 72-38-408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, and otherwise to the settlor's successors in interest.

History: En. Sec. 58, Ch. 264, L. 2013.

72-38-410. Modification or termination of trust — proceedings for approval or disapproval. (1) In addition to the methods of termination prescribed by 72-38-411 through 72-38-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(2) A proceeding to approve or disapprove a proposed modification or termination under 72-38-411 through 72-38-416 or a trust combination or division under 72-38-417 may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed

modification or termination under 72-38-411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under 72-38-413.

History: En. Sec. 59, Ch. 264, L. 2013.

72-38-411. Modification or termination of irrevocable trust by consent. (1) An irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material noncharitable purpose of the trust. Modification or termination of a charitable trust requires the consent of the attorney general. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney and the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed. This subsection does not apply to irrevocable trusts created before or to revocable trusts that became irrevocable before October 1, 1989.

(2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. Modification or termination of a charitable trust requires the consent of the attorney general.

(3) For the purposes of this section, a spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust under subsection (1) or (2), the trustee shall distribute the trust property as agreed by the beneficiaries. In the case of a charitable trust, the trust property must be distributed in accord with the terms of the trust, and in the absence of applicable terms, consistent with the charitable purposes of the trust as agreed by the attorney general and the beneficiaries or, if there are no charitable organizations with the rights of a beneficiary and the termination is pursuant to subsection (1), then as agreed by the settlor and the attorney general, but if the termination is pursuant to subsection (2), then as decided by the court.

(5) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (1) or (2), the modification or termination may be approved by the court if the court is satisfied that:

(a) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(b) the interests of a beneficiary who does not consent will be adequately protected.

History: En. Sec. 60, Ch. 264, L. 2013; amd. Sec. 6, Ch. 564, L. 2023.

72-38-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively. (1) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(2) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

History: En. Sec. 61, Ch. 264, L. 2013.

72-38-413. Cy pres. (1) Except as otherwise provided in subsection (2), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(a) the trust does not fail, in whole or in part;

(b) the trust property does not revert to the settlor or the settlor's successors in interest; and

(c) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(2) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(a) the trust property is to revert to the settlor and the settlor is still living; or

(b) fewer than 21 years have elapsed since the date of the trust's creation.

History: En. Sec. 62, Ch. 264, L. 2013.

72-38-414. Modification or termination of uneconomic trust. (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

History: En. Sec. 63, Ch. 264, L. 2013.

72-38-415. Reformation to correct mistakes. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

History: En. Sec. 64, Ch. 264, L. 2013.

72-38-416. Modification to achieve settlor's tax objectives. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

History: En. Sec. 65, Ch. 264, L. 2013.

72-38-417. Combination and division of trusts. After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

History: En. Sec. 66, Ch. 264, L. 2013.

Part 5
Creditor's Claims — Spendthrift and Discretionary Trusts

72-38-501. Rights of beneficiary's creditor or assignee. To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to the relief that is appropriate under the circumstances.

History: En. Sec. 67, Ch. 264, L. 2013.

72-38-502. Spendthrift provision. (1) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(2) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and except as otherwise provided in this part, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

History: En. Sec. 68, Ch. 264, L. 2013.

72-38-503 reserved.

72-38-504. Discretionary trusts — effect of standard. (1) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion even if:

(a) the discretion is expressed in the form of a standard of distribution; or

(b) the trustee has abused the discretion.

(2) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(3) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

History: **En. Sec. 69, Ch. 264, L. 2013.**

72-38-505. Creditor's claim against settlor. (1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. A trustee's discretionary authority to pay directly or to reimburse the settlor for any tax that is payable by the settlor on trust income or principal may not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor is not entitled to reach any amount solely by reason of this discretionary authority.

(c) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(2) For purposes of this section:

(a) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this chapter or as later amended.

History: **En. Sec. 70, Ch. 264, L. 2013.**

72-38-506. Overdue distribution. (1) (a) In this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust.

(b) The term does not include a distribution subject to the exercise of the trustee's discretion even if:

(i) the discretion is expressed in the form of a standard of distribution; or

(ii) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(2) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

History: **En. Sec. 71, Ch. 264, L. 2013.**

72-38-507. Personal obligations of trustee. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

History: **En. Sec. 72, Ch. 264, L. 2013.**

Part 6
Revocable Trusts

72-38-601. Capacity of settlor of revocable trust. The capacity required to create, amend, revoke, or add property to a revocable trust or to direct the actions of the trustee of a revocable trust is the same as that required to make a will.

History: En. Sec. 73, Ch. 264, L. 2013.

72-38-602. Revocation or amendment of revocable trust. (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before October 1, 1989.

(2) If a revocable trust is created or funded by more than one settlor:

(a) to the extent the trust consists of community property, the trust may be revoked by either party acting alone but may be amended only by joint action of both parties;

(b) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard the portion of the trust property attributable to that settlor's contribution; and

(c) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly provide notice to the other settlors of the revocation or amendment.

(3) The settlor may revoke or amend a revocable trust:

(a) by substantial compliance with a method provided in the terms of the trust; or

(b) if the terms of the trust do not provide a method, by a writing delivered to the trustee manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs. However, with respect to community property under subsection (2)(a), the trustee shall deliver the property to the respective spouses, proportionate to their respective shares of the community property as prescribed by the laws of the state out of which the community property interest arose, and the nonrevoking spouse may elect to have the trust continue with respect to that spouse's share of the community property.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust and the power of attorney.

(6) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

History: En. Sec. 74, Ch. 264, L. 2013.

72-38-603. Settlor's powers — powers of withdrawal. (1) To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

(2) To the extent a trust is revocable, rights of the beneficiaries are subject to the control of the settlor and the duties of the trustee, including the duty to provide notice, are owed exclusively to the settlor.

(3) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

History: En. Sec. 75, Ch. 264, L. 2013; amd. Sec. 22, Ch. 325, L. 2021.

72-38-604. Limitation on action contesting validity of revocable trust — distribution of trust property. (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(a) 3 years after the settlor's death; or

(b) 120 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(a) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

History: **En. Sec. 76, Ch. 264, L. 2013.**

72-38-605. Fees and expenses — by whom paid. When the validity of a trust that was revocable at the settlor's death is contested through a judicial proceeding, the attorney fees and costs, as provided in 25-10-201, incurred in defending the validity of the trust must be paid by the party contesting the validity of the trust if the trust is found valid. If the trust is found invalid, costs as provided in 25-10-201, but not attorney fees of the objecting party, must be paid by the party who defended the validity of the trust or out of the trust property, as the court directs.

History: **En. Sec. 77, Ch. 264, L. 2013.**

72-38-606. Separate writing identifying disposition of tangible personal property. (1) A revocable trust instrument may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the trust, other than money.

(2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the settlor and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the settlor's death;

(b) prepared before or after the execution of the trust;

(c) altered by the settlor after its preparation; and

(d) a writing that has no significance apart from its effect upon the dispositions made by the trust.

History: **En. Sec. 78, Ch. 264, L. 2013.**

Part 7
Office of Trustee

72-38-701. Accepting or declining trusteeship. (1) Except as otherwise provided in subsection (3), a person designated as trustee accepts the trusteeship:

(a) by substantially complying with a method of acceptance provided in the terms of the trust; or

(b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is considered to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may:

(a) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(b) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

History: En. Sec. 79, Ch. 264, L. 2013.

72-38-702. Trustee's bond. (1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(3) A regulated financial-service institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

History: En. Sec. 80, Ch. 264, L. 2013.

72-38-703. Cotrustees. (1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(3) Subject to 72-40-116, a cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(6) Except as otherwise provided in subsection (7), a trustee who does not join in an action of another trustee is not liable for the action.

(7) Subject to 72-40-116, each trustee shall exercise reasonable care to:

(a) prevent a cotrustee from committing a serious breach of trust; and

(b) compel a cotrustee to redress a serious breach of trust.

(8) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

History: En. Sec. 81, Ch. 264, L. 2013; amd. Sec. 23, Ch. 325, L. 2021.

72-38-704. Vacancy in trusteeship — appointment of successor. (1) A vacancy in a trusteeship occurs if:

(a) a person designated as trustee rejects the trusteeship;

(b) a person designated as trustee cannot be identified or does not exist;

(c) a trustee resigns;

(d) a trustee is disqualified or removed;

(e) a trustee dies;

(f) a guardian or conservator is appointed for an individual serving as trustee; or

(g) a trustee has been ordered committed as provided in 53-21-102.

(2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(3) A vacancy in a trusteeship of a trust that is required to be filled must be filled in the following order of priority:

(a) by a person designated in the terms of the trust to act as successor trustee;

(b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(c) by a person appointed by the court.

(4) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

History: En. Sec. 82, Ch. 264, L. 2013.

72-38-705. Resignation of trustee. (1) A trustee may resign:

(a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(b) with the approval of the court.

(2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

History: En. Sec. 83, Ch. 264, L. 2013.

72-38-706. Removal of trustee. (1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(2) The court may remove a trustee if:

(a) the trustee has committed a serious breach of trust;

(b) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(c) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively and impartially, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(d) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee or in lieu of or in addition to removing a trustee, the court may order appropriate relief under 72-38-1001(2) as may be necessary to protect the trust property or the interests of the beneficiaries.

History: En. Sec. 84, Ch. 264, L. 2013.

72-38-707. Delivery of property by former trustee. (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it. If a trustee fails to deliver trust property as required in this subsection:

(a) the resigned or removed trustee is personally liable for the actual damages incurred as a result of the failure to deliver trust property; and

(b) the court, in its discretion, may order the resigned or removed trustee personally to pay the reasonable attorney fees incurred in enforcing the resigned or removed trustee's duty to deliver trust property.

History: En. Sec. 85, Ch. 264, L. 2013.

72-38-708. Compensation of trustee. (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(a) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(b) the compensation specified by the terms of the trust would be unreasonably low or high.

History: En. Sec. 86, Ch. 264, L. 2013.

72-38-709. Reimbursement of expenses. (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(a) expenses that were properly incurred in the administration of the trust; and

(b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

History: **En. Sec. 87, Ch. 264, L. 2013.**

Part 8
Duties and Powers of Trustee

72-38-801. Duty to administer trust. Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously and in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

History: **En. Sec. 88, Ch. 264, L. 2013.**

72-38-802. Duty of loyalty. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in 72-38-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) the transaction was authorized by the terms of the trust;

(b) the transaction was approved by the court;

(c) the beneficiary did not commence a judicial proceeding within the time allowed by 72-38-1005;

(d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with 72-38-1009; or

(e) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(a) the trustee's spouse;

(b) the trustee's descendants, siblings, parents, or their spouses;

(c) an agent or attorney of the trustee; or

(d) a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary. However, a beneficiary's gift to charity or to a trust for a charity's benefit is not voidable by this subsection even though the charity may be, or may have been, serving as trustee of a trust created for the benefit of the beneficiary.

(5) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee or its affiliate provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Title 72, chapter 38, part 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing

investment advisory or investment management services, the trustee must at least annually notify the persons entitled under 72-38-813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(7) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(8) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) payment of reasonable compensation to the trustee;

(c) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(e) an advance by the trustee of money for the protection of the trust.

(9) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

History: En. Sec. 89, Ch. 264, L. 2013; amd. Sec. 34, Ch. 55, L. 2015; amd. Sec. 3, Ch. 181, L. 2015.

72-38-803. Impartiality. If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

History: En. Sec. 90, Ch. 264, L. 2013.

72-38-804. Prudent administration. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

History: En. Sec. 91, Ch. 264, L. 2013.

72-38-805. Costs of administration. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

History: En. Sec. 92, Ch. 264, L. 2013.

72-38-806. Trustee's skills. A trustee who has special skills or expertise or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise shall use those special skills or expertise.

History: En. Sec. 93, Ch. 264, L. 2013.

72-38-807. Delegation by trustee. (1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with subsection (1) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

History: En. Sec. 94, Ch. 264, L. 2013.

72-38-808. Repealed. Sec. 24, Ch. 325, L. 2021.

History: En. Sec. 95, Ch. 264, L. 2013.

72-38-809. Control and protection of trust property. A trustee shall take reasonable steps to take control of and protect the trust property.

History: En. Sec. 96, Ch. 264, L. 2013.

72-38-810. Recordkeeping and identification of trust property. (1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection (4), a trustee shall designate the trust property so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

History: En. Sec. 97, Ch. 264, L. 2013.

72-38-811. Enforcement and defense claims. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

History: En. Sec. 98, Ch. 264, L. 2013.

72-38-812. Collecting trust property. A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee.

History: En. Sec. 99, Ch. 264, L. 2013.

72-38-813. Duty to inform and report. A trustee shall comply with the following provisions unless the trust instrument specifically limits or waives any of these requirements:

(1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A trustee shall promptly respond to a qualified beneficiary's request for information that is reasonably necessary to enable the qualified beneficiary to enforce the rights of the qualified beneficiary under the trust or to prevent or redress a breach of trust.

(2) A trustee:

(a) upon request of any beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the trust instrument that describe or affect the beneficiary's interest;

(b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(c) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of portions of the trust instrument as provided in subsection (2)(a), and of the right to a trustee's report as provided in subsection (3); and

(d) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3) A trustee shall send to the distributees or permissible distributees of trust income or principal and to other qualified beneficiaries who request it, at least annually, on a calendar year or fiscal year basis consistent with tax reporting requirements and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values including any cash, cash equivalents, stocks, bonds, mutual funds, or other securities, investments, or investment property held by the trustee as of the last business day of the calendar year or fiscal period, if the fair market value is readily ascertainable or the property is traded on an established public market. An appraisal or statement of fair market value may not be required for any real estate, closely held business, or other property held by the trustee as of that date if the fair market value is not readily ascertainable or traded on an established public market. A qualified beneficiary must also receive, upon request, copies of any applicable income, estate, or transfer tax returns relevant to the administration of the trust. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(4) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A qualified beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(5) Subsections (2)(b) and (2)(c) do not apply to a trustee who accepts a trusteeship before October 1, 2013, to an irrevocable trust created before October 1, 2013, or to a revocable trust that becomes irrevocable before October 1, 2013.

History: En. Sec. 100, Ch. 264, L. 2013.

72-38-814. Discretionary powers — tax savings. (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(2) Subject to subsection (4) and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(a) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(b) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(3) A power whose exercise is limited or prohibited by subsection (2) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(4) Subsection (2) does not apply to:

(a) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter or as later amended, was previously allowed;

(b) any trust during any period that the trust may be revoked or amended by its settlor; or

(c) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter or as later amended.

History: En. Sec. 101, Ch. 264, L. 2013.

72-38-815. General powers of trustee. (1) A trustee, without authorization by the court, may exercise:

(a) powers conferred by the terms of the trust; and

(b) except as limited by the terms of the trust:

(i) all powers over the trust property that an unmarried competent owner has over individually owned property;

(ii) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(iii) any other powers conferred by this chapter.

(2) The exercise of a power is subject to the fiduciary duties prescribed by 72-38-801 through 72-38-817.

History: En. Sec. 102, Ch. 264, L. 2013.

72-38-816. Specific powers of trustee. Without limiting the authority conferred by 72-38-815, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial-service institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property

owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(a) vote or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(b) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(c) pay calls, assessments, and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights; and

(d) deposit the securities with a depositary or other regulated financial-service institution;

(8) with respect to an interest in real property, construct or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(a) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(b) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(c) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(d) compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

(e) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and assert a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability, or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit or by:

(a) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(b) paying it to the beneficiary's custodian named under the Uniform Transfers to Minors Act or to a custodial trustee pursuant to the laws of any state and, for that purpose, creating a custodianship or custodial trust;

(c) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(d) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

History: En. Sec. 103, Ch. 264, L. 2013.

72-38-817. Distribution upon termination. (1) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(a) it was induced by improper conduct of the trustee; or

(b) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

History: En. Sec. 104, Ch. 264, L. 2013.

72-38-818 and 72-38-819 reserved.

72-38-820. Definitions. As used in 72-38-820 through 72-38-826, the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

History: En. Sec. 105, Ch. 264, L. 2013.

72-38-821. Distribution under charitable trust or private foundation. During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

History: En. Sec. 106, Ch. 264, L. 2013.

72-38-822. Restrictions on trustees under charitable trust, private foundations, or split-interest trust. During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in a manner that subjects the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

History: En. Sec. 107, Ch. 264, L. 2013.

72-38-823. Exceptions applicable to split-interest trusts. (1) Subsections (2) and (3) of 72-38-822 do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) Section 72-38-822 does not apply with respect to any of the following:

(a) any amounts payable under the terms of a trust to income beneficiaries unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

History: En. Sec. 108, Ch. 264, L. 2013.

72-38-824. Incorporation in trust instruments. The provisions of 72-38-821 through 72-38-823 and 72-38-826 must be considered to be contained in the terms of the trust to which 72-38-820 through 72-38-826 apply. Any term of the trust inconsistent with or contrary to 72-38-820 through 72-38-826 is without effect unless that term is more restrictive.

History: En. Sec. 109, Ch. 264, L. 2013.

72-38-825. Proceedings. (1) A proceeding contemplated by section 101(l)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to 72-38-213 by the organization involved. All specifically named beneficiaries of the organization and the attorney general must be parties to the proceedings. Notwithstanding 72-38-201, this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section must be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings must be similarly recorded.

History: En. Sec. 110, Ch. 264, L. 2013.

72-38-826. Disposition of property upon termination of a charitable trust, private foundation, or split-interest trust. At the termination of a charitable trust, private foundation organized as a trust, or any other trust described in section 501(c)(3) of the Internal Revenue Code, the trust property must be distributed for one or more exempt purposes or to organizations that are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or must be distributed to the federal government or to a state or local government for a public purpose. At the termination of a split-interest trust, the charitable portion of the trust property must be distributed to one or more organizations described in sections 170(c), 2055(a), and 2522(a) of the Internal Revenue Code.

History: **En. Sec. 111, Ch. 264, L. 2013.**

Part 9
Uniform Prudent Investor Act

Part Cross-References

Funeral trust fund — deposit of money — compliance with prudent investor rule, 37-19-828.

72-38-901. Prudent investor rule. (1) Except as provided in subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(2) The settlor may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

History: **En. Sec. 112, Ch. 264, L. 2013.**

72-38-902. Standard of care — investments and management — considerations. (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(2) A trustee's investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio;

(e) the expected total return from income and the appreciation of capital;

(f) other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries;

(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of this Act.

History: **En. Sec. 113, Ch. 264, L. 2013.**

72-38-903. Diversification — duty of trustee — exception. (1) Subject to subsection (2), in making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is not prudent to do so.

(2) If trust assets include farm or ranch property, a closely held family business, timber interests, or interests in oil, gas, or minerals, the trustee may elect to retain those assets. A trustee's exercise of discretion to retain assets of the character described in this subsection is not a breach of the trustee's duty to diversify investments.

History: **En. Sec. 114, Ch. 264, L. 2013.**

72-38-904. Review of assets — time for compliance. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this part.

History: **En. Sec. 115, Ch. 264, L. 2013.**

72-38-905. Compliance determinations — standards. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

History: En. Sec. 116, Ch. 264, L. 2013.

72-38-906. Interpretation of trust terms construing legal investments. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, must be construed as authorizing any investment or strategy permitted under this part: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

History: En. Sec. 117, Ch. 264, L. 2013.

Part 10
Liability of Trustees and Rights of Persons Dealing with Trustee

72-38-1001. Remedies for breach of trust. (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may:

(a) compel the trustee to perform the trustee's duties;

(b) enjoin the trustee from committing a breach of trust;

(c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(d) order a trustee to account;

(e) appoint a special fiduciary to take possession of the trust property and administer the trust;

(f) suspend the trustee;

(g) remove the trustee as provided in 72-38-706;

(h) reduce or deny compensation to the trustee;

(i) subject to 72-38-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(j) order any other appropriate relief.

History: En. Sec. 118, Ch. 264, L. 2013.

72-38-1002. Damages for breach of trust. (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) the profit the trustee made by reason of the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the fiduciary duties of the trustee, the terms or purposes of the trust, or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

(3) If the trustee is liable for interest pursuant to this section, interest must be determined as the greater of the following amounts:

(a) the amount of interest that accrues at the legal rate on judgments; or

(b) the amount of interest the trustee actually received as a result of the breach of trust.

History: En. Sec. 119, Ch. 264, L. 2013.

72-38-1003. Damages in absence of breach. (1) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

History: En. Sec. 120, Ch. 264, L. 2013.

72-38-1004. Attorney fees and costs. In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

History: En. Sec. 121, Ch. 264, L. 2013.

72-38-1005. Limitation of action against trustee. (1) A beneficiary may not commence a proceeding against a trustee for breach of trust more than 3 years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(3) If subsection (1) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within 5 years after the first to occur of:

(a) the removal, resignation, or death of the trustee;

(b) the termination of the beneficiary's interest in the trust; or

(c) the termination of the trust.

History: En. Sec. 122, Ch. 264, L. 2013.

72-38-1006. Reliance on trust instrument. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

History: En. Sec. 123, Ch. 264, L. 2013.

72-38-1007. Event affecting administration or distribution. If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

History: En. Sec. 124, Ch. 264, L. 2013.

72-38-1008. Exculpation of trustee. (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(a) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the fiduciary duties of the trustee, the terms or purposes of the trust, or the interests of the beneficiaries;

(b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor; or

(c) relieves the trustee of accountability for profits derived from a breach of trust.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

History: En. Sec. 125, Ch. 264, L. 2013; amd. Sec. 4, Ch. 181, L. 2015.

72-38-1009. Beneficiary's consent, release, or ratification. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

History: **En. Sec. 126, Ch. 264, L. 2013.**

72-38-1010. Limitation on personal liability of trustee. (1) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(2) A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

History: **En. Sec. 127, Ch. 264, L. 2013.**

72-38-1011. Interest as general partner. (1) Unless personal liability is imposed in the contract, a trustee who in the trustee's fiduciary capacity holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Montana Uniform Partnership Act or the Montana Uniform Limited Partnership Act. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is satisfactory disclosure of the fiduciary capacity.

(2) A trustee who, in the trustee's fiduciary capacity, holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest, but this does not affect the liability of the trustee for the trustee's own negligence, wrongful act, or misconduct.

(3) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

History: **En. Sec. 128, Ch. 264, L. 2013.**

72-38-1012. Protection of person dealing with trustee. (1) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(4) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

History: **En. Sec. 129, Ch. 264, L. 2013.**

72-38-1013. Certification of trust. (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(a) that the trust exists and the date the trust instrument was executed;

(b) the identity of the settlor;

(c) the identity and address of the currently acting trustee;

(d) the relevant powers of the trustee;

(e) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(g) if the governing law of the trust is not the law of Montana, the identity of the state whose laws govern the trust.

(2) A certification of trust may be signed or otherwise authenticated by any trustee. Upon request, the trustee shall acknowledge the certification in order that the certification may be recorded.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument when required to be furnished by law or in a judicial proceeding concerning the trust.

(10) A certification under subsection (1)(g) may not be construed as constituting consent by any person receiving a certification of trust to the jurisdiction or application of laws of any state.

History: En. Sec. 130, Ch. 264, L. 2013; amd. Sec. 5, Ch. 181, L. 2015.

Part 11
Miscellaneous Provisions

72-38-1101. Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: En. Sec. 131, Ch. 264, L. 2013.

72-38-1102. Electronic records and signatures. The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

History: En. Sec. 132, Ch. 264, L. 2013.

72-38-1103. Limit on charitable trust requirement. (1) Except as provided in subsections (2) and (3), a state agency or state official may not impose any annual filing or reporting requirements on a charitable trust that are more stringent, restrictive, or expansive than the requirements authorized under Montana law.

(2) Subsection (1) does not apply to state grants and contracts, fraud investigations, or enforcement actions against specific charitable trusts.

(3) Subsection (1) may not be construed to impact the authority of the attorney general to act as a qualified beneficiary for a charitable trust pursuant to 72-38-221.

History: En. Sec. 2, Ch. 458, L. 2023.

72-38-1104 through 72-38-1110 reserved.

72-38-1111. Effects on real property transactions. (1) This section relates only to conveyances of real property to or from a trust and supplements but does not modify other substantive provisions of Title 72, chapter 38, relating to the creation or validity of trusts.

(2) Except as otherwise provided in Title 72, chapter 38, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in Title 72, chapter 38.

(3) An instrument creating or amending a trust need not be recorded, but may be recorded if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance or in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance, the conveyance must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust that may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument, portion of a separate trust instrument, or abstract of a separate trust instrument recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee may not limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument, portion of a trust instrument, or abstract of a trust instrument that is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee or from the successor trustee conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of a successor trustee may be established by a recorded affidavit of the successor trustee specifying the successor trustee's name and address and the date and circumstances of succession and confirming that the successor trustee is currently lawfully serving in that capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries is considered the only necessary representative of the trust and of all persons with an interest in the trust. A judgment is binding upon and conclusive against the trust and all persons interested in the trust as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by another recorded instrument specifying the trustee's name and address and confirming that the party is currently serving as the trustee.

History: En. Sec. 213, Ch. 685, L. 1989; amd. Sec. 2, Ch. 688, L. 1991; amd. Sec. 82, Ch. 494, L. 1993; amd. Sec. 2487, Ch. 56, L. 2009; amd. Sec. 155, Ch. 264, L. 2013; Sec. 72-36-206, MCA 2011; redes. 72-38-1111 by Code Commissioner, 2013.

CHAPTER 39

UNIFORM TRUST DECANTING ACT

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Part 1
General Provisions

72-39-101. Short title. This chapter may be cited as the "Uniform Trust Decanting Act".

History: **En. Sec. 1, Ch. 177, L. 2021.**

72-39-102. Definitions. In this chapter:

(1) "Appointive property" has the meaning in 72-7-102(2).

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. 2041(b)(1)(A), as amended, or 26 U.S.C. 2514(c)(1), as amended, and any applicable regulations.

(3) "Authorized fiduciary" means:

(a) a trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(b) a special fiduciary appointed under 72-39-205; or

(c) a special-needs fiduciary under 72-39-209.

(4) "Beneficiary" means a person that:

(a) has a present or future, vested or contingent, beneficial interest in a trust;

(b) holds a power of appointment over trust property; or

(c) is an identified charitable organization that will or may receive distributions under the terms of the trust.

(5) "Charitable interest" means an interest in a trust that:

(a) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(b) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(c) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(6) "Charitable organization" means:

(a) a person, other than an individual, organized and operated exclusively for charitable purposes; or

(b) a government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(7) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(8) "Court" means the court in this state having jurisdiction in matters relating to trusts.

(9) "Current beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

(10) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under this chapter to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(11) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(12) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.

(13) "First-trust instrument" means the trust instrument for a first trust.

(14) "General power of appointment" has the meaning in 72-7-102(6).

(15) "Jurisdiction", with respect to a geographic area, includes a state or country.

(16) "Person" has the meaning in 72-38-103(12).

(17) "Power of appointment" has the meaning in 72-7-102(13).

(18) "Powerholder" has the meaning in 72-7-102(14).

(19) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(a) includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(b) does not include a power exercisable only at the powerholder's death.

(20) "Qualified beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined:

(a) is a distributee or permissible distributee of trust income or principal;

(b) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subsection (20)(a) terminated on that date without causing the trust to terminate; or

(c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(21) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. 674(b)(5)(A), as amended, and any applicable regulations.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Second trust" means:

(a) a first trust after modification under this chapter; or

(b) a trust to which a distribution of property from a first trust is or may be made under this chapter.

(24) "Second-trust instrument" means the trust instrument for a second trust.

(25) "Settlor", except as otherwise provided in 72-39-221, means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to the person's contribution except to the extent another person has power to revoke or withdraw that portion.

(26) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) "State" has the meaning in 72-38-103(20).

(28) "Terms of the trust" means:

(a) except as otherwise provided in subsection (28)(b), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(b) the trust's provisions as established, determined, or amended by:

(i) a trustee or other person in accordance with applicable law;

(ii) a court order; or

(iii) a nonjudicial settlement agreement under 72-38-111.

(29) "Trust instrument" means a record executed by the settlor to create a trust or by any person to create a second trust that contains some or all of the terms of the trust, including any amendments.

History: **En. Sec. 2, Ch. 177, L. 2021.**

72-39-103. Scope. (1) Except as provided in subsections (2) and (3), this chapter applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(2) This chapter does not apply to a trust held solely for charitable purposes.

(3) Subject to 72-39-211, a trust instrument may restrict or prohibit exercise of the decanting power.

(4) This chapter does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than this chapter, common law, a court order, or a nonjudicial settlement agreement.

(5) This chapter does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

History: **En. Sec. 3, Ch. 177, L. 2021.**

72-39-104. Application — governing law. This chapter applies to a trust created before, on, or after October 1, 2021 that:

(1) has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) provides by its trust instrument that is governed by the law of this state or is governed by the law of this state for the purpose of:

(a) administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(b) construction of terms of the trust; or

(c) determining the meaning or effect of terms of the trust.

History: **En. Sec. 5, Ch. 177, L. 2021.**

Part 2
Decanting

72-39-201. Fiduciary duty. (1) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(2) This chapter does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this chapter.

(3) Except as otherwise provided in a first-trust instrument, for purposes of this chapter and 72-38-801 and 72-38-802(1), the terms of the first trust are deemed to include the decanting power.

History: **En. Sec. 4, Ch. 177, L. 2021.**

72-39-202. Reasonable reliance. A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this chapter, law of this state other than this chapter, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

History: En. Sec. 6, Ch. 177, L. 2021.

72-39-203. Notice — exercise of decanting power. (1) In this section, a notice period begins on the day notice is given under subsection (3) and ends 60 days after the day notice is given.

(2) Except as otherwise provided in this chapter, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(3) Except as otherwise provided in subsection (6), an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days, exclusive of the day notice is given, before the exercise to:

(a) each settlor of the first trust, if living or then in existence;

(b) each qualified beneficiary of the first trust;

(c) each holder of a presently exercisable power of appointment over any part or all of the first trust;

(d) each person that currently has the right to remove or replace the authorized fiduciary;

(e) each other fiduciary of the first trust;

(f) each fiduciary of the second trust; and

(g) the attorney general, if 72-39-210(2) applies.

(4) An authorized fiduciary is not required to give notice under subsection (3) to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(5) A notice under subsection (3) must:

(a) specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(b) specify the proposed effective date for exercise of the power;

(c) include a copy of the first-trust instrument; and

(d) include a copy of all second-trust instruments.

(6) The decanting power may be exercised before expiration of the notice period under subsection (1) if all persons entitled to receive notice waive the period in a signed record.

(7) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under 72-39-205 asserting that:

(a) an attempted exercise of the decanting power is ineffective because it did not comply with this chapter or was an abuse of discretion or breach of fiduciary duty; or

(b) 72-39-218 applies to the exercise of the decanting power.

(8) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (3) if the authorized fiduciary acted with reasonable care to comply with subsection (3).

History: En. Sec. 7, Ch. 177, L. 2021.

72-39-204. Representation. (1) Notice to a person with authority to represent and bind another person under a first-trust instrument or Title 72, chapter 38, part 3, has the same effect as notice given directly to the person represented.

(2) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or Title 72, chapter 38, part 3, is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(3) A person with authority to represent and bind another person under a first-trust instrument or Title 72, chapter 38, part 3, may file an application under 72-39-205 on behalf of the person represented.

(4) A settlor may not represent or bind a beneficiary under this chapter.

History: En. Sec. 8, Ch. 177, L. 2021.

72-39-205. Court involvement. (1) On application of an authorized fiduciary, a person entitled to notice under 72-39-203(3), a beneficiary, or with respect to a charitable interest the attorney general or other person that has standing to enforce the charitable interest, the court may:

(a) provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this chapter and consistent with the fiduciary duties of the authorized fiduciary;

(b) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this chapter and to exercise the decanting power;

(c) approve an exercise of the decanting power;

(d) determine that a proposed or attempted exercise of the decanting power is ineffective because:

(i) after applying 72-39-218, the proposed or attempted exercise does not or did not comply with this chapter; or

(ii) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(e) determine the extent to which 72-39-218 applies to a prior exercise of the decanting power;

(f) provide instructions to the trustee regarding the application of 72-39-218 to a prior exercise of the decanting power; or

(g) order other relief to carry out the purposes of this chapter.

(2) On application of an authorized fiduciary, the court may approve:

(a) an increase in the fiduciary's compensation under 72-39-212; or

(b) a modification under 72-39-214 of a provision granting a person the right to remove or replace the fiduciary.

History: En. Sec. 9, Ch. 177, L. 2021.

72-39-206. Formalities. An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by 72-39-203, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

History: En. Sec. 10, Ch. 177, L. 2021.

72-39-207. Decanting power under expanded distributive discretion. (1) In this section:

(a) "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(b) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(c) "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(d) "Vested interest" means:

(i) a right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(ii) a current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(iii) a current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(iv) a presently exercisable general power of appointment; or

(v) a right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(2) Subject to subsection (3) and 72-39-210, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(3) Subject to 72-39-209, in an exercise of the decanting power under this section, a second trust may not:

(a) include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (4);

(b) include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (4); or

(c) reduce or eliminate a vested interest.

(4) Subject to subsection (3)(c) and 72-39-210, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(a) retain a power of appointment granted in the first trust;

(b) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(c) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(d) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(5) A power of appointment described in subsections (4)(a) through (4)(d) may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(6) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

History: En. Sec. 11, Ch. 177, L. 2021.

72-39-208. Decanting power under limited distributive discretion. (1) In this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(2) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(3) Under this section and subject to 72-39-210, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust.

(4) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(a) the distribution is applied for the benefit of the beneficiary;

(b) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under the Montana Uniform Trust Code; or

(c) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(5) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

History: En. Sec. 12, Ch. 177, L. 2021.

72-39-209. Trust for beneficiary with disability. (1) In this section:

(a) "Beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incapacitated.

(b) "Governmental benefits" means financial aid or services from a state, federal, or other public agency.

(c) "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

(i) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(ii) if no trustee or fiduciary has discretion under subsection (1)(c)(i), a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(iii) if no trustee or fiduciary has discretion under subsections (1)(c)(i) and (1)(c)(ii), a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(d) "Special-needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(2) A special-needs fiduciary may exercise the decanting power under 72-39-207 over the principal of the first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(a) a second trust is a special-needs trust that benefits the beneficiary with a disability; and

(b) the special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(3) In an exercise of the decanting power under this section, the following rules apply:

(a) Notwithstanding 72-39-207(3)(b), the interest in the second trust of a beneficiary with a disability may:

(i) be a pooled trust as defined by medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. 1396p(d)(4)(C), as amended; or

(ii) contain payback provisions complying with reimbursement requirements of medicaid law under 42 U.S.C. 1396p(d)(4)(A), as amended.

(b) 72-39-207(3)(c) does not apply to the interests of the beneficiary with a disability.

(c) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts that are substantially similar to the beneficiary's beneficial interests in the first trust.

History: En. Sec. 13, Ch. 177, L. 2021.

72-39-210. Protection of charitable interest. (1) In this section:

(a) "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(b) "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986, as amended, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(2) If a first trust contains a determinable charitable interest, the attorney general has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(3) If a first trust contains a charitable interest, the second trust or trusts may not:

(a) diminish the charitable interest;

(b) diminish the interest of an identified charitable organization that holds the charitable interest;

(c) alter any charitable purpose stated in the first-trust instrument; or

(d) alter any condition or restriction related to the charitable interest.

(4) If there are two or more second trusts, the second trusts must be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (3).

(5) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to subsection (3) must be administered under the law of this state unless:

(a) the attorney general, after receiving notice under 72-39-203, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(b) the attorney general consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(c) the court approves the exercise of the decanting power.

(6) This chapter does not limit the powers and duties of the attorney general under law of this state other than this chapter.

History: En. Sec. 14, Ch. 177, L. 2021.

72-39-211. Trust limitation on decanting. (1) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(a) the decanting power; or

(b) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(2) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(a) the decanting power; or

(b) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(3) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(4) Subject to subsections (1) and (2), an authorized fiduciary may exercise the decanting power under this chapter even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(5) If a first-trust instrument contains an express prohibition described in subsection (1) or an express restriction described in subsection (2), the provision must be included in the second-trust instrument.

History: En. Sec. 15, Ch. 177, L. 2021.

72-39-212. Change in compensation. (1) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(a) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(b) the increase is approved by the court.

(2) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by the Montana Uniform Trust Code unless:

(a) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(b) the increase is approved by the court.

(3) A change in an authorized fiduciary's compensation that is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (1) and (2).

History: En. Sec. 16, Ch. 177, L. 2021.

72-39-213. Relief from liability and indemnification. (1) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(2) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(3) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(4) Subject to subsection (3), a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this chapter.

History: En. Sec. 17, Ch. 177, L. 2021.

72-39-214. Removal or replacement of authorized fiduciary. An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) the court approves the modification and the modification grants a substantially similar power to another person.

History: En. Sec. 18, Ch. 177, L. 2021.

72-39-215. Tax-related limitations. (1) In this section:

(a) "Grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. 671 through 677, as amended, or 26 U.S.C. 679, as amended.

(b) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.

(c) "Nongrantor trust" means a trust that is not a grantor trust.

(d) "Qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. 401(a)(9), as amended, and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. 401(a)(9) or the regulations.

(2) An exercise of the decanting power is subject to the following limitations:

(a) If a first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument may not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(b) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument may not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(c) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as amended, the second-trust instrument may not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(b), as amended. If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as amended, by application of 26 U.S.C. 2503(c), as amended, the second-trust instrument may not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(c), as amended.

(d) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. 1361, as amended, and the first trust is, or but for provisions of this chapter other than this section would be, a permitted shareholder under any provision of 26 U.S.C. 1361, as amended, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. 1361(c)(2), as amended. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this chapter other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. 1361(d), as amended, the second-trust instrument may not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(e) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. 2642(c), as amended, the second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. 2642(c), as amended.

(f) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as amended, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. 401(a)(9), as amended, or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and 72-39-218 applies to the separate share.

(g) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. 672(f)(2)(A), as amended, the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. 672(f)(2)(A), as amended.

(h) In this subsection (2)(h), "tax benefit" means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subsection (2)(h)(i) and (2)(h)(ii) below, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(i) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(ii) the transfer of property held by the first trust or the first trust qualified, or but for provisions of this chapter other than this section, would have qualified for the tax benefit.

(i) Subject to subsection (2)(d):

(i) except as otherwise provided in subsection (2)(g), the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(ii) except as otherwise provided in subsection (2)(j), the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(j) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(i) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

(ii) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(A) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(B) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

History: **En. Sec. 19, Ch. 177, L. 2021.**

72-39-216. Duration of second trust. (1) Subject to subsection (2), a second trust may have a duration that is the same as or different from the duration of the first trust.

(2) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation, which apply to property of the first trust.

History: **En. Sec. 20, Ch. 177, L. 2021.**

72-39-217. Need to distribute not required. An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

History: **En. Sec. 21, Ch. 177, L. 2021.**

72-39-218. Saving provision. (1) If exercise of the decanting power would be effective under this chapter except that the second-trust instrument in part does not comply with this chapter, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(a) A provision in the second-trust instrument that is not permitted under this chapter is void to the extent necessary to comply with this chapter.

(b) A provision required by this chapter to be in the second-trust instrument that is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this chapter.

(2) If a trustee or other fiduciary of a second trust determines that subsection (1) applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

History: **En. Sec. 22, Ch. 177, L. 2021.**

72-39-219. Trust for care of animal. (1) In this section:

(a) "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals.

(b) "Protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

(2) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this chapter if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(3) A protector for an animal has the rights under this chapter of a qualified beneficiary.

(4) Notwithstanding any other provision of this chapter, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

History: **En. Sec. 23, Ch. 177, L. 2021.**

72-39-220. Terms of second trust. A reference in Title 72, chapter 38, to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

History: **En. Sec. 24, Ch. 177, L. 2021.**

72-39-221. Settlor. (1) For purposes of law of this state other than this chapter and subject to subsection (2), a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(2) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered.

History: **En. Sec. 25, Ch. 177, L. 2021.**

72-39-222. Later-discovered property. (1) Except as otherwise provided in subsection (3), if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(2) Except as otherwise provided in subsection (3), if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(3) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

History: **En. Sec. 26, Ch. 177, L. 2021.**

72-39-223. Obligations. A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

History: **En. Sec. 27, Ch. 177, L. 2021.**

Part 3
Miscellaneous Provisions

72-39-301. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: **En. Sec. 28, Ch. 177, L. 2021.**

72-39-302. Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: **En. Sec. 29, Ch. 177, L. 2021.**

72-39-303. Common law of trusts — principles of equity. The common law of trusts and principles of equity supplement this chapter except to the extent modified by this chapter or another statute of this state.

History: **En. Sec. 30, Ch. 177, L. 2021.**

CHAPTER 40
UNIFORM DIRECTED TRUST ACT

Part 1 — General Provisions

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Part 1
General Provisions

72-40-101. Short title. This part may be cited as the "Uniform Directed Trust Act".
History: En. Sec. 1, Ch. 325, L. 2021.

72-40-102. Definitions. In this part, the following definitions apply:

(1) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this part, or law of this state other than this part pertaining to trusts.

(2) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

(3) "Directed trustee" means a trustee that is subject to a trust director's power of direction.

(4) "Person" has the meaning in 72-38-103.

(5) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in 72-40-105(2).

(6) "Settlor" has the meaning in 72-38-103.

(7) "State" has the meaning in 72-38-103.

(8) "Terms of a trust" means:

(a) except as otherwise provided in subsection (8)(b), the manifestation of the settlor's intent regarding a trust's provision as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(b) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under 72-38-111.

(9) "Trust director" means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) "Trustee" has the meaning in 72-38-103.
History: En. Sec. 2, Ch. 325, L. 2021.

72-40-103. Application — principal place of administration. (1) This part applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(a) if the trust was created before October 1, 2021, this part applies only to a decision or action occurring on or after October 1, 2021; and

(b) if the principal place of administration of the trust is changed to this state on or after October 1, 2021, this part applies only to a decision or action occurring on or after the date of the change.

(2) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust that designate the principal place of administration of the trust are valid and controlling if:

(a) a principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(b) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or

(c) all or part of the administration occurs in the designated jurisdiction.
History: En. Sec. 3, Ch. 325, L. 2021.

72-40-104. Common law and principles of equity. The common law and principles of equity supplement this part, except to the extent modified by this part or law of this state other than this part.

History: En. Sec. 4, Ch. 325, L. 2021.

72-40-105. Exclusions. (1) In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(2) This part does not apply to a:

(a) power of appointment;

(b) power to appoint or remove a trustee or trust director;

(c) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(d) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(i) the beneficiary; or

(ii) another beneficiary represented by the beneficiary under 72-38-301 through 72-38-305 with respect to the exercise or nonexercise of the power; or

(e) power over a trust if:

(i) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(ii) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986, as amended, and regulations issued under it, as amended.

(3) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property, which is exercisable while the person is not serving as a trustee, is a power of appointment and not a power of direction.

History: En. Sec. 5, Ch. 325, L. 2021.

72-40-106 through 72-40-109 reserved.

72-40-110. Powers of trust director. (1) Subject to 72-40-111, the terms of a trust may grant a power of direction to a trust director.

(2) Unless the terms of a trust provide otherwise:

(a) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection (1); and

(b) trust directors with joint powers shall act by majority decision.

History: En. Sec. 6, Ch. 325, L. 2021.

72-40-111. Limitations on trust director. A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under 72-40-110(2)(a) regarding:

(1) a payback provision in the terms of a trust necessary to comply with the reimbursement requirements of medicaid law in section 1917 of the Social Security Act, 42 U.S.C. 1396p(d)(4)(A), as amended, and regulations issued under it, as amended; and

(2) a charitable interest in the trust, including notice regarding the interest to the attorney general.

History: En. Sec. 7, Ch. 325, L. 2021.

72-40-112. Duty and liability of trust director. (1) Subject to subsection (2), with respect to a power of direction or further power under 72-40-110(2)(a):

(a) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(i) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(ii) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(b) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this part to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this part.

(3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

History: **En. Sec. 8, Ch. 325, L. 2021.**

72-40-113. Duty and liability of directed trustee. (1) Subject to subsection (2), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under 72-40-110(2)(a), and the trustee is not liable for the action.

(2) A directed trustee may not comply with a trust director's exercise or nonexercise of a power of direction or further power under 72-40-110(2)(a) to the extent that by complying the trustee would engage in willful misconduct.

(3) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(a) the breach involved the trustee's or other director's willful misconduct;

(b) the release was induced by improper conduct of the trustee or other director in procuring the release; or

(c) at the time of the release, the director did not know the material facts relating to the breach.

(4) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(5) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

History: **En. Sec. 9, Ch. 325, L. 2021.**

72-40-114. Duty to provide information to trust director or trustee. (1) Subject to 72-40-115, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(a) the powers or duties of the trustee; and

(b) the powers or duties of the director.

(2) Subject to 72-40-115, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(a) the powers or duties of the director; and

(b) the powers or duties of the trustee or other director.

(3) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(4) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

History: **En. Sec. 10, Ch. 325, L. 2021.**

72-40-115. No duty to monitor, inform, or advise. (1) Unless the terms of a trust provide otherwise:

(a) a trustee does not have a duty to:

(i) monitor a trust director; or

(ii) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(b) by taking an action described in subsection (1)(a), a trustee does not assume the duty excluded by subsection (1)(a).

(2) Unless the terms of a trust provide otherwise:

(a) a trust director does not have a duty to:

(i) monitor a trustee or another trust director; or

(ii) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(b) by taking an action described in subsection (2)(a), a trust director does not assume the duty excluded by subsection (2)(a).

History: **En. Sec. 11, Ch. 325, L. 2021.**

72-40-116. Application to cotrustee. The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under 72-40-113 through 72-40-115.

History: **En. Sec. 12, Ch. 325, L. 2021.**

72-40-117. Limitation of action against trust director. (1) An action against a trust director for breach of trust must be commenced within the same limitation period as under 72-38-1005 for an action for breach of trust against a trustee in a like position and under similar circumstances.

(2) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under 72-38-1005 in an action for breach of trust against a trustee in a like position and under similar circumstances.

History: **En. Sec. 13, Ch. 325, L. 2021.**

72-40-118. Defenses in action against trust director. In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

History: **En. Sec. 14, Ch. 325, L. 2021.**

72-40-119. Jurisdiction over trust director. (1) By accepting appointment as a trust director of a trust subject to this part, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(2) This section does not preclude other methods of obtaining jurisdiction over a trust director.

History: **En. Sec. 15, Ch. 325, L. 2021.**

72-40-120. Office of trust director. Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(1) acceptance under 72-38-701;
(2) giving of bond to secure performance under 72-38-702;
(3) reasonable compensation under 72-38-708;
(4) resignation under 72-38-705;
(5) removal under 72-38-706; and
(6) vacancy and appointment of successor under 72-38-704.

History: **En. Sec. 16, Ch. 325, L. 2021.**

72-40-121. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: **En. Sec. 17, Ch. 325, L. 2021.**

72-40-122. Relation to electronic signatures in global and national commerce act. This part modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: **En. Sec. 18, Ch. 325, L. 2021.**

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(ii) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(b) by taking an action described in subsection (2)(a), a trust director does not assume the duty excluded by subsection (2)(a).

History: En. Sec. 11, Ch. 325, L. 2021.

72-40-116. Application to cotrustee. The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under 72-40-113 through 72-40-115.

History: En. Sec. 12, Ch. 325, L. 2021.

72-40-117. Limitation of action against trust director. (1) An action against a trust director for breach of trust must be commenced within the same limitation period as under 72-38-1005 for an action for breach of trust against a trustee in a like position and under similar circumstances.

(2) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under 72-38-1005 in an action for breach of trust against a trustee in a like position and under similar circumstances.

History: En. Sec. 13, Ch. 325, L. 2021.

72-40-118. Defenses in action against trust director. In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

History: En. Sec. 14, Ch. 325, L. 2021.

72-40-119. Jurisdiction over trust director. (1) By accepting appointment as a trust director of a trust subject to this part, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(2) This section does not preclude other methods of obtaining jurisdiction over a trust director.

History: En. Sec. 15, Ch. 325, L. 2021.

72-40-120. Office of trust director. Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(1) acceptance under 72-38-701;
(2) giving of bond to secure performance under 72-38-702;
(3) reasonable compensation under 72-38-708;
(4) resignation under 72-38-705;
(5) removal under 72-38-706; and
(6) vacancy and appointment of successor under 72-38-704.

History: En. Sec. 16, Ch. 325, L. 2021.

72-40-121. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: En. Sec. 17, Ch. 325, L. 2021.

72-40-122. Relation to electronic signatures in global and national commerce act. This part modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: En. Sec. 18, Ch. 325, L. 2021.